

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,245

315

Thaddeus E. Tansimore, Appellant,

v.

United States of America, Appellee.

APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

SEP 28 1962

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September 28, 1962

Statement of Question Presented

The question is whether, in a trial upon an indictment for rape, it was reversible error for the court to instruct the jury on the lesser included offense of assault with intent to commit rape, where the evidence showed either the commission of a completed act of rape or that appellant had committed none of the acts comprising either offense.

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Jurisdictional Statement

The district court had jurisdiction to try appellant, upon Indictment Grand Jury No. 1252-61, filed in open court on October 30, 1961 (J.A. 1), under 18 U.S.C. § 3231 (1958) and D. C. Code § 11-306 (1961).

This Court has jurisdiction under 28 U.S.C. §§ 1291, 1294, 1915 (1958) and Federal Rule of Criminal Procedure 37(a). Final judgment was entered in the district court on April 5, 1962 (J.A. 116); appellant's petition for leave to appeal in forma pauperis was filed on April 10, 1962 (J.A. 117), and denied April 17, 1962 (J.A. 118). Following timely application to this Court, Misc. No. 1886, D. C. Cir., leave to appeal without prepayment of cost was granted by order of this Court dated July 12, 1962.

STATEMENT OF THE CASE

The grand jury indicted the appellant, Thaddeus E. Tansimore, for having carnal knowledge of Audrey Cubbage, also known as Audrey Bolyar, forcibly and against her will. (J.A. 1). To this indictment, appellant pleaded not guilty. (J.A. 1). Miss Cubbage, who was 17 years old at the time of the supposed assault (J.A. 3), is appellant's step-daughter (J.A. 3), and the illegitimate daughter of Mrs. Tansimore (J.A. 56), from whom appellant has been separated for about nine years. (J.A. 13).

At the trial which began March 1, 1962 (J.A. 2), both Miss Cubbage and Mr. Tansimore testified. In many respects their testimony agreed; in many of the salient respects in which they disagreed, each had corroborating supporting witnesses.

A. TESTIMONY AT TRIAL

1. Events Prior to 10 p.m. on October 17, 1961

Appellant, who was separated from his wife, lived at 1624 15th Street, N.W. (J.A. 56). Mrs. Tansimore, along with two of appellant's children and the complaining witness lived at 1302 R Street, N.W. (J.A. 3, 15-16).

On Saturday, October 14, 1961, appellant had given his family \$7 or \$8 for use during the following week. (J.A. 16, 65).

The next day, appellant's youngest son came to where appellant lived and told him that the family needed some more money (J.A. 16, 66), and, according to appellant, that the complaining witness had sent him over. (J.A. 66).

On Tuesday, October 17, 1962, appellant went to 1302 R Street to see about this request about 9 p.m. (J.A. 4, 70, 89-90). There he met complaining witness, who repeated the request for additional money, stating that the other money had been spent for the veterinarian. (J.A. 3, 70-71). Appellant told her that he had no money with him, and that if she wanted some money she would have to go to his room. (J.A. 3, 70-71).

The two then went in appellant's car to his room, parking about two blocks away. (J.A. 4-5, 19, 71-72). The complaining witness testified that she saw no one on the street around the rooming house. (J.A. 19).

Up to this point, testimony of appellant and the complaining witness agree; the two arrived at appellant's room sometime after 9 o'clock in the evening of October 17. (J.A. 4). The normal 2 - 3 block ride took about 15-20 minutes, according to appellant, due to the difficulty in finding a parking space. (J.A. 90).

Appellant has a basement apartment in a rooming house which can be reached by a separate outside entrance, as well as through the main entrance to the house. (J.A. 67). Next to his room is the furnace room and community kitchen. (J.A. 69).

2. Events in Appellant's Room

The complaining witness testified that when she and appellant entered the room, appellant shut the door and poured himself a drink. (J.A. 5, 6).

She sat down and he put his hands between her legs and said, "I know you have had that before." (J.A. 6).

The complaining witness testified she got up, tried to protest loudly, and tried to leave, but the appellant stopped her, told her to shut up, and pulled her down on the bed. (J.A. 6, 38).

Miss Cabbage testified that appellant held her down on the bed, choked her, threatened to hit her with his fist, and forced some whisky on her. (J.A. 6, 7, 20).

Finally the complaining witness testified that he had sexual relations with her against her consent, and then committed an act of oral sodomy. (J.A. 7)

The complaining witness also testified that appellant gave her the money she had requested earlier as they left the room after he raped her. (J.A. 8).

Appellant testified to an entirely different set of circumstances. He testified that when he arrived home with the complaining witness he put on the lights and checked them because there had been some light trouble, took a drink of whisky for himself, and went to wash his hands which were dirty from fixing his car. (J.A. 72-74, 90-91). After washing his hands and drinking a glass of whipped up milk and raw egg, (J.A. 91), appellant returned to his room, where he testified, the complaining witness had fixed herself a drink of her own accord. (J.A. 74, 91).

Appellant testified that he then asked Miss Cubbage to step outside, so he could get the money she wanted from a hiding place. (J.A. 75, 91). He then got the money and gave it to her, and the two of them left the building. (J.A. 74-75, 90).

Appellant denied that he put his hands on the complaining witness, choked her, threatened her, blocked her way, grabbed her, scratched her, told her to shut up

or had sexual relations with her. (J.A. 76-77, 92).

Appellant's landlady, who was home the evening of October 17, 1961, testified that she heard no outcries, scuffling or disturbances. (J.A. 101-103).

3. Events After Leaving Appellant's Room

Appellant and the complaining witness both testified that the two of them walked from appellant's apartment to where he had parked his car, and that appellant then drove the complaining witness back to her home, leaving her out at the corner. (J.A. 7, 10, 23-24, 76, 94-95).

The complaining witness testified that she was upset during this short ride and holding back tears. (J.A. 24). She admitted that appellant in no way threatened or menaced her during the ride or the walk to the car. (J.A. 23-24). Appellant testified that from what he could see she may have been a bit angry. (J.A. 94).

Upon arriving home, about 10 p.m., appellant met a neighbor, Mrs. Frances B. Brooks, on the front stoop, and in a very upset condition told her what had happened. (J.A. 8-9, 28, 34).

Mrs. Brooks called another neighbor, Mrs. Janice M. Hudson, to whom complaining witness repeated that her stepfather had attacked her, and the three of them went

to a public phone to call the complaining witness' mother. (J.A. 9, 28, 35, 36).

Mrs. Brooks testified that Audrey "was very pale and she looked frightened as though something had scared her out of her wits. When she spoke to me she did it in such a funny manner, it didn't seem like her at all." (J.A. 35).

Mrs. Tansimore suggested that the police be called, which was done. (J.A. 10, 35, 36).

When the police responded, one of the officers, Private Charles K. Marlak, talked to the complaining witness and as a result drove with her over to appellant's room. (J.A. 43-44). As he was not in, they waited in the police car for appellant to come back to his room. (J.A. 44-45).

Appellant drove back in the company of another woman. (J.A. 47, 97-98). The police approached appellant who belligerently stated that he had done nothing. (J.A. 45). When confronted with complaining witness, he admitted that she had been to his apartment, and that he had driven her to her home; he denied having sexual relations with her. (J.A. 45, 46, 48).

In a subsequent confrontation at the Third Precinct, appellant again denied having sexual relations with the complaining witness, stating that the complaining witness lied like her mother. (J.A. 52, 54).

4. Medical Testimony Concerning the
Complaining Witness

Immediately after appellant's arrest, the complaining witness was taken to D. C. General Hospital for a medical examination. (J.A. 10, 37, 52). By this time it was shortly after midnight. (J.A. 52).

A medical examination conducted by Dr. John E. Perry of D. C. General Hospital showed scratchlike abrasions on the complaining witness' neck, a perforated hymen, a first degree tear on the vaginal floor and on the left vaginal vault and a greenish whitish secretion in the vagina. (J.A. 37-38).

A test made of this secretion by Dr. Daniel L. Weiss, Chief Pathologist of D. C. General Hospital, showed intact sperm in a smear taken from the cervix in the vaginal tract. (J.A. 41).

The complaining witness testified that as of the date of the trial she was five months pregnant. (J.A. 8, 29).

The F.B.I. laboratory test made of the complaining witness' underclothes showed slight blood smears, which could not be typed, but no semen. (J.A. 31-33).

5. Medical Testimony Concerning Appellant

Appellant testified that he had and had had for a number of years a hernia about the size of a baseball, which became quite prominent after he had been on his feet for many hours, and which prevented him from having sexual relations. (J.A. 61, 62).

Appellant stated that he had worked 14 hours on the day of the alleged assault, so that the hernia was quite painful, and would have prevented his having sexual relations. (J.A. 83-84, 87).

Appellant was examined during the trial by a Dr. Charles McGregor Crittenden, who concluded that appellant had a tender reducible hernia about the size of a fist. (J.A. 78). On cross-examination, he stated that such a hernia could be very painful, (J.A. 80) but that it would not prevent the performance of the sexual act. (J.A. 82).

6. Summary of the Evidence When the Case Was Submitted to the Jury

At the time the case was submitted to the jury, the jury had before it two radically conflicting stories as to what occurred in appellant's room. According to the complaining witness, appellant had violently attacked her and had sexual relations with her against her will. (J.A. 5-7, 20).

According to appellant, nothing untoward had taken place, and he had merely provided her with the money she had requested for his family and driven her home. (J.A. 72-77, 90-92).

The jury also had before it evidence that the complaining witness was pregnant; according to her testimony due to appellant's attack. (J.A. 8, 29). In contrast, it had appellant's testimony that on the night of the alleged attack his hernia was so painful as to prevent him from having any sexual relations.

B. CHARGE TO THE JURY

1. Conferences at the Bench Concerning the Charge

Following the completion of appellant's testimony, at a meeting at the bench, the court stated without any preliminary remarks: (J.A. 99).

"(AT THE BENCH)

"THE COURT: I will submit it with -- if you want -- the lesser included offense.

"MR. DAVID: The lesser.

"THE COURT: The reason is the defendant denied he participated at all, but I will submit the lesser included charge of assault with intent to commit rape, if you request it.

"MR. DAVID: Yes.

"MR. BLACKWELL: In view of the facts, though -- strike that.

(IN OPEN COURT)"

Subsequently, the court again noted that "the charge is rape and assault with intent to commit rape. No admission." (J.A. 105).

Finally, the court stated that "there is nothing special except the charge of rape and assault." (J.A. 105).

2. The Charge as Given

Judge Youngdahl instructed the jury that they must find that the appellant had penetrated the complaining witness, and that the complaining witness had either resisted to the utmost of her physical powers or had been overcome by threats which put her in fear of death or of grave bodily harm. Finally, the Judge charged that the complaining witness' testimony had to be corroborated by either witnesses or surrounding circumstances. (J.A. 110-111). Then the court stated:

"Now, if the Government has failed to prove beyond a reasonable doubt that the defendant committed the charge of rape, the Court is submitting to you for your consideration whether or not the Government has proved beyond a reasonable doubt that the defendant committed a lesser included charge, which is called assault with intent to commit rape.

"An assault is defined by law as an unlawful attempt or effort with force and violence to do injury to the person of another, coupled with the present apparent possibility of carrying out such an attempt.

"In the charge of assault with intent to commit rape, the Government must prove beyond a reasonable doubt an assault and also a specific intent to commit the act of rape.

"Of course, specific intent cannot be proved directly. We cannot photograph the processes of the human mind. Intent can only be proved by what a person says and by what a person does." (J.A. 111)

The jury was given a sheet of paper on which was written the three possible verdicts: not guilty; guilty of rape; and guilty of assault with intent to commit rape. After concluding his instructions to the jury, Judge Youngdahl asked whether Counsel were satisfied. Both Counsel for the Government and Counsel for appellant indicated that they were satisfied with the charge. (J.A. 114).

C. THE VERDICT

The jury retired at 2:07 p.m. on March 5th. (J.A. 114). At 4:38 p.m. the jury returned to the courtroom. At that time the foreman indicated that they were having difficulty in arriving at a verdict and that they would need additional time for deliberation. (J.A. 114-115). Finally, on March 6, 1962, the jury returned the verdict of guilty of assault with intent to commit rape. (J.A. 116).

D. JUDGMENT

Appellant was sentenced to a term of three to nine years in the custody of the Attorney General. This judgment and commitment was filed on April 5, 1962. (J.A. 116).

STATUTES AND RULES INVOLVED

D.C. Code § 22-2801 (1961):

"Whoever has carnal knowledge of a female forcibly and against her will . . . shall be imprisoned for not more than thirty years. . . ."

D.C. Code § 22-501 (1961):

"Every person convicted of assault with intent . . . to commit rape . . . shall be sentenced to imprisonment for not more than fifteen years."

Fed. R. Crim. P. 30:

"At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury."

Fed. R. Crim. P. 31(c):

"(c) Conviction of Less Offense. The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense."

Fed. R. Crim. P. 52(b):

"(b) Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."

STATEMENT OF POINT

Where appellant was charged with rape, and where the evidence at trial showed either that appellant had forcibly had sexual relations with the complaining witness, or that he had committed none of the acts constituting rape or any other related offense, it was plain error affecting substantial rights for the Court to permit appellant's right to acquittal to be compromised by charging the jury that they might find appellant guilty of assault with intent to commit rape, which they did.

SUMMARY OF ARGUMENT

Despite the apparent permissiveness of Rule 31(c) of the Federal Rules of Criminal Procedure, it is error for a trial court to charge and submit to a jury a lesser included offense to the indicted offense, unless there is sufficient evidence which would permit a finding that such lesser offense had in fact been committed. E.g., Sparf v. United States, 156 U.S. 51,

62-65 (1895); Coleman v. United States, 111 U.S. App. D.C. 210, 295 F.2d 555 (1961), cert. denied, 369 U.S. 813 (1962). Although this gloss on Rule 31(c) has had its primary development in felony-murder cases, such as Coleman, the Rule is equally applicable in cases in which the commission of the lesser included offense is a necessary prelude to the commission of the indicted offense. In such cases it has been held that where the evidence is overwhelming that all of the elements of the indicted offense are present, it is erroneous to charge the jury on the lesser included offense, for to do so would permit the jury "arbitrarily to disregard the evidence" Sparf v. United States, supra at 63; see Burchan v. United States, 82 U.S. App. D.C. 283, 163 F.2d 761 (1947).

Should an erroneous charge be given, and the defendant convicted of the lesser offense, his rights are prejudiced, for the jury has been given the unwarranted opportunity to compromise away his right to an outright acquittal. See Green v. United States, 95 U.S. App. D.C. 45, 218 F.2d 856 (1955); People v. Mussenden, 308 N.Y. 558, 127 N.E.2d 551 (1955); Comment, 57 Nw. U.L. Rev. 62, 71 (1962). The Green decision is still the accepted law of this jurisdiction. See Coleman v. United States, 111 U.S. App. D.C. at 214 & n.15, 295 F.2d at 559 & n.15.

The rule in the Green case properly applies in the instant case, for there was no basis upon which the jury could have found that appellant had not raped the complaining witness, unless the jury found that petitioner was completely innocent. The jury had before it two radically conflicting stories as to what occurred in appellant's room: the complaining witness' testimony that she had been brutally attacked and raped, as a result of which she was then pregnant, which testimony was corroborated by neighbors and medical evidence (J.A. 5-7, 20, 29, 35-36, 38, 41); and appellant's testimony that nothing untoward had taken place, and that he had in no way threatened, molested, or attacked the complaining witness, corroborated by his landlady's testimony and medical evidence that he might have been unable to perform the sexual act (J.A. 72-77, 80, 83-84, 90-92, 101-03). Under these circumstances, the submission of the lesser included offense served only to permit the jury to reach a compromise verdict -- a verdict without rational foundation. The appellant was thereby deprived of his right to have his guilt or innocence determined solely on the evidence presented. As in the Green case, this deprivation requires a new trial.

Nor was appellant's failure to object to the charge as given a basis for failing to protect his rights.

This court has often found unobjected to instructions to be "plain error . . . affecting substantial rights," Fed. R. Crim. P. 52(b). E.g., Payton v. United States, 96 U.S. App. D.C. 1, 222 F.2d 794 (1955). Indeed, in the Green case itself, trial counsel had acquiesced in the submission of the charge on the lesser included offense; yet this Court considered the charge erroneous and prejudicial, and reversed, thus exercising its power under Rule 52(b). See Brief for Appellant, p. 3-4, Green v. United States, supra. Appellant stands in the same position, and should be accorded the same treatment.

ARGUMENT

I. APPELLANT WAS INDICATED FOR RAPE, AND THIS WAS THE ONLY CRIME FOR WHICH PROOF INTRODUCED; THEREFORE THE COURT SHOULD NOT HAVE PERMITTED APPELLANT'S RIGHT TO ACQUITTAL TO BE COMPROMISED AWAY BY THE SUBMISSION TO THE JURY OF THE LESSER INCLUDED OFFENSE OF ASSAULT WITH INTENT TO COMMIT RAPE.

A. The Lesser Included Offense Could Properly Be Submitted To The Jury Only If There Were Evidence Upon Which Could Be Based A Finding That Such Offense Had Been Committed.

Federal Rule of Criminal Procedure 31(c) permits the submission to the jury of offenses "necessarily included in the offense charged." This is the most recent codification of a rule of federal practice dating back to Rev. Stat. § 1035 (1875). See Berra v. United States, 351 U.S. 131, 134 n.6 (1956). It is generally said that an offense is "necessarily included" if "it is impossible to commit the greater without first having committed the lesser." Giles v. United States, 144 F.2d 860, (9th Cir. 1944). Thus, an assault with intent to commit rape is admittedly "included" in every forcible rape under D.C. Code § 22-2801 (1961). Williams v. United States, 76 U.S. App. D.C. 299, 131 F.2d 21 (1942). Yet despite the apparent permissiveness of Rule 31(c), it can be error to submit the lesser included offense to the jury. The basic gloss on the rule was developed in Sparf v. United States, 156 U.S. 51,

63-64 (1895), where it was first held that it was not erroneous to refuse to submit the lesser included offense where there was no evidence to support a jury finding that only the lesser included offense had been committed. In the Sparf case, the defendant had been charged with common-law murder, and urged as error the failure of the jury to be given the lesser included offense of manslaughter. The Supreme Court stated that it would have ^{been} erroneous to submit the lesser included offense, for there was no evidence negating the evidence of malice. Under such circumstances, to have submitted the lesser offense would be only "to invest juries in criminal cases with the power arbitrarily to disregard the evidence ...and thus impose a punishment different from that prescribed by law." 156 U.S. at 63-64. This rule is still a limitation on the power of federal trial courts, Coleman v. United States, 111 U.S. App. D.C. 210, 295 F.2d 555 (1961), (en banc), cert. denied, 369 U.S. 813 (1962), and is universally recognized, e.g., People v. Bryan, 190 Cal. App. 2d 781, 12 Cal. Rptr. 361 (1961); State v. Herron, 349 S.W.2d 936 (Mo. 1961); People v. Mussenden, 308 N.Y. 558, 127 N.E.2d 551 (1955). See generally

Comment, 57 Nw. U.L. Rev. 62 (1962); Note, 56 Colum. L. Rev. 888 (1956).

The Mussenden case is particularly relevant here. In that case the defendant was charged with attempted first-degree robbery and the lesser included offenses of second-degree assault with intent to commit robbery and larceny. The defense offered was that the defendant had committed none of the charged acts, and that the complaining witness was merely excitable. The judge refused to charge on the lesser offense, and this was urged as error on appeal. The Court of Appeals, ruling that the theory governing the submission of lesser-included offenses was applicable whether explicitly charged or not, held that the refusal to submit the lesser offense to the jury was not error, for under the state of the evidence, the State had made out the full attempt, and the defense, if believed, called for total exoneration. As the New York Court of Appeals stated:

"certainly a court should avoid doing anything, such as submitting lower crimes in an inappropriate case, that would constitute an invitation to the jury to foreswear its duty and return a compromise or otherwise unwarranted verdict. Or, to express the matter in somewhat different

terms, the jury's power to dispense mercy, by favoring the defendant despite the evidence, should not be allowed so to dominate the trial proceedings as to impede or interfere with the jury's primary fact-finding function."

"The trial court may not, ... permit the jury to chose between the crime charged and some lesser offense where the evidence essential to support a verdict of guilt of the latter necessarily proves guilt of the greater crime as well."

308 N.Y. at 563, 127 N.E.2d at 554.

Although much of the development of the rule has been in the cases of felony murder, where the issue was the submission of second-degree murder instruction, see, e.g., Coleman v. United States, supra; Green v. United States, 95 U.S. App. D.C., 45, 218 F.2d 856 (1955), the rule is of course as equally applicable to cases in which the lesser offense unquestionably contains all but one of the elements of the greater offenses. E.g., Sparf v. United States, supra (1st-degree murder/manslaughter-malice unquestionably present); MacIllrath v. United States, 88 U.S. App. D.C. 270, 188 F.2d 1009 (1955) (assault with dangerous weapon/simple assault--weapon unquestionably present); Burcham v. United States, 82 U.S. App. D.C. 283, 163 F.2d 761 (1947) (same); People v. Mussenden, supra (attempted robbery/assault with

intent to commit robbery--evidence of either an attempt, or of innocence); People v. Herron, supra (robbery/larceny^{1/}--evidence of either violence or innocence).

It can be seen that the nature of the defense may also make the submission of the lesser offense erroneous. E.g., People v. Mussenden, supra (denial of any wrongdoing); State v. Herron, supra (same); People v. Bryan, supra (charge of mayhem--plea of self-defense); cf. Lovely v. United States, 169 F.2d 386 (4th Cir. 1948) (admission of intercourse and defense of consent eliminates assault with intent to commit rape as issue in case).

Unless, then, the evidence at appellant's trial permitted the jury to find that appellant had only committed an assault with intent to commit rape, it was error for the trial court to submit the issue to the jury.

^{1/} The submission of the lesser included offense is also erroneous if such lesser offense is barred by the statute of limitations at the time of indictment. Chaifetz v. United States, 109 U.S. App. D.C. 349, 288 F.2d 133 (1960), rev'd in part, cert. denied in part, 366 U.S. 209 (1961) (per curiam); Askins v. United States, 102 U.S. App. D.C. 198, 251 F.2d 909 (1958) (successful collateral attack).

B. The Evidence In This Case Does Not Permit The Submission Of The Lesser Included Offense

As the evidence stood upon the submission of this case to the jury, there was no basis upon which the jury could have found that appellant had failed to rape the complaining witness, unless the jury found appellant completely innocent. The jury had before it two irreconcilable stories: The complaining witness testified to a brutal attack in which she was choked, and further bodily harm was threatened; she testified that she was pulled down on appellant's bed, held there over her protests, raped, and had an act of oral sodomy performed on her. (J.A. 5-7, 20). Her hysterical state upon arriving home was attested to by her neighbors, to whom she told what had happened to her. (J.A. 33-37). A medical examination performed within hours of the alleged attack showed the presence of sperm in the vagina, (J.A. 38, 41) and Miss Cabbage testified that she was then pregnant due to the attack. (J.A. 8, 29-30).

Appellant's testimony was simple, and bore no resemblance to that of the complaining witness. He fixed himself a drink, he testified, to ease the pain of his hernia, washed up, had a glass of whipped-up,

raw egg and milk, and then gave the complaining witness the money needed for the support of appellant's family. (J.A. 72-77, 90-92). Appellant flatly denied at trial, as he had during his entire custody (J.A. 45-46, 48, 52, 54), that he had molested, attacked, choked, threatened, raped, or performed unnatural sexual acts on the complaining witness--quite literally, nothing untoward had taken place. (J.A. 76-77, 92-93). Appellant's landlady, at home that evening, heard no disturbances or out-cries. (J.A. 101-03). Moreover, it was appellant's testimony that his hernia, quite prominent and painful after fourteen hours on his feet, would have prevented his from performing, and therefore contemplating, the sexual act. (J.A. 83-84, 87-88, 93). Appellant's medical testimony corroborated that the hernia could be painful, although the doctor stated that the sexual act could be performed. (J.A. 80-81).

With the evidence in this state, it was erroneous to submit the lesser-included offense to the jury, for there was no basis upon which the jury could find that only the lesser-included offense was committed, unless the jury accepted appellant's exonerating testimony. Compare Burcham v. United States, 82 U.S. App. D.C. 283,

163 F.2d 761; Comment, 57 Nw. U.L. Rev. 62, 65-66 (1962). The nature of the defense, which if believed called for acquittal, properly precluded the submission of the lesser offense. See State v. Mussenden, 308 N.Y. 558, 127 N.E.2d 551 (1955); People v. Bryan, 190 Cal. App. 2d 781, 12 Cal. Rptr. 361 (1961); State v. Herron, 349 S.W.2d 936 (Mo. 1961).

C. Appellant Was Prejudiced By The Submission Of The Lesser Included Offense Of Which He Was Found Guilty:

The trial court was bound to follow the salutary rule laid down by this Court in Green v. United States, 95 U.S. App. D.C. 45, 218 F.2d 856 (1955), in which this Court held that there was prejudicial and reversible error where the jury convicted Green of the lesser offense which the trial court should not have submitted as there was no evidence to support such a jury finding. This was so, because the submission prejudiced the defendant's right to have his guilt or innocence determined solely on the available evidence, by permitting the jury to compromise away his possible acquittal. See Sparf v. United States, 156 U.S. 51, 63-64 (1895); State v. Reed, 39 N.M. 44, 39 P.2d 1005 (1934); State v. Bertoch, 79 N.W. 378 (Iowa 1899); ^{2/} Comment, 57 Nw.

^{2/} On rehearing, the court being equally divided, (Cont'd)

U.L. Rev. 62, 71-72 (1962).

The rule in the Green case is still the accepted law of this jurisdiction, see Coleman v. United States, 111 U.S. App. D.C. 210, 214 & n.15, 295 F.2d 555, 559 & n.15 (1961) (en banc), cert. denied, 369 U.S. 813 (1962). The record in this case (J.A. 114-15) shows that the jury was having difficulty arriving at a verdict. Although the basis for the difficulty cannot be determined, the court's charge permitted the jury to compromise away appellant's possible acquittal. The Green rule calls for the reversal of the conviction in this case.

II. THE FAILURE OF APPELLANT'S TRIAL COUNSEL TO OBJECT TO THE INSTRUCTION ON THE LESSER INCLUDED OFFENSE DOES NOT BAR THE RELIEF APPELLANT SEEKS.

This Court has the power to notice "plain errors or defects affecting substantial rights" where the error was not brought to the attention of the trial court, Fed. R. Crim. P. 52(b), even in the circumstance of a failure to object to instruction as ostensibly required by Fed.

2/ (Cont'd) the giving of the instruction was upheld and the conviction on the lesser offense reversed as not supported by the evidence. State v. Bartoch, 112 Iowa 195, 83 N.W. 967 (1900).

R. Crim. P. 30. Payton v. United States, 96 U.S. App. D.C. 1, 222 F.2d 794 (1955); see Surratt v. United States, 106 U.S. App. D.C. 49, 269 F.2d 240 (1959); United States v. O'Connor, 237 F.2d 466 (2d Cir. 1956). The error alleged in the present case is a patent error, so substantial as to permit collateral attack on the conviction under proper circumstances. See Askins v. United States, 102 U.S. App. D.C. 198, 251 F.2d 909 (1958), in which the appellant was granted relief under 28 U.S.C. § 2255 (1958) where he had been indicted for first-degree murder, and convicted of second-degree murder, the statute of limitations on which had run prior to his indictment.

Indeed, the record in the Green case itself shows that trial counsel there had "requested" the instruction on the lesser offense in much the same way as trial counsel in this case:

"THE COURT: ...Now, the Court's notion about this case is that the only included offense that the Court feels it would be justified to submit to the jury would be murder in the second degree.

"Well, now, you want that instruction...and the Court will so instruct."

Brief for Appellant, pp. 3-4, Green v. United States, 95 U.S. App. D.C. 45, 218 F.2d 856 (1955). Compare

J.A. 99. Despite the lack of objection--or even affirmative request--this Court exercised its discretion under Rule 52(b), and reversed the conviction. Admittedly, appellant cannot demand and require that this Court exercise its discretion, yet appellant stands in the same position as Green, and is as prejudiced as was Green by the submission of the lesser offense and the jury's compromise on that verdict. Appellant submits that this is an appropriate case for the exercise of this Court's power under Rule 52(b).

III. CONCLUSION

For the foregoing reasons, appellant submits that the judgment of conviction should be reversed.

Respectfully submitted,

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Attorney for Appellant
(Appointed by this Court)

September 28, 1962

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,245

THADDEUS E. TANSIMORE, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court
for the District of Columbia

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
JOEL D. BLACKWELL,
WILLIAM C. WEITZEL, JR.,
Assistant United States Attorneys.

United States Court of Appeals

for the District of Columbia Circuit

FILED NOV 7 1962

Joseph W. Stewart

CLERK

QUESTION PRESENTED

In the opinion of the appellee, the following question is presented:

In a prosecution for rape, is it reversible error for the court to instruct on the lesser included offense of assault with intent to commit rape when 1) the Government's evidence established *prima facie* proof of every element of the lesser crime; and 2) the instruction was requested by appellant?

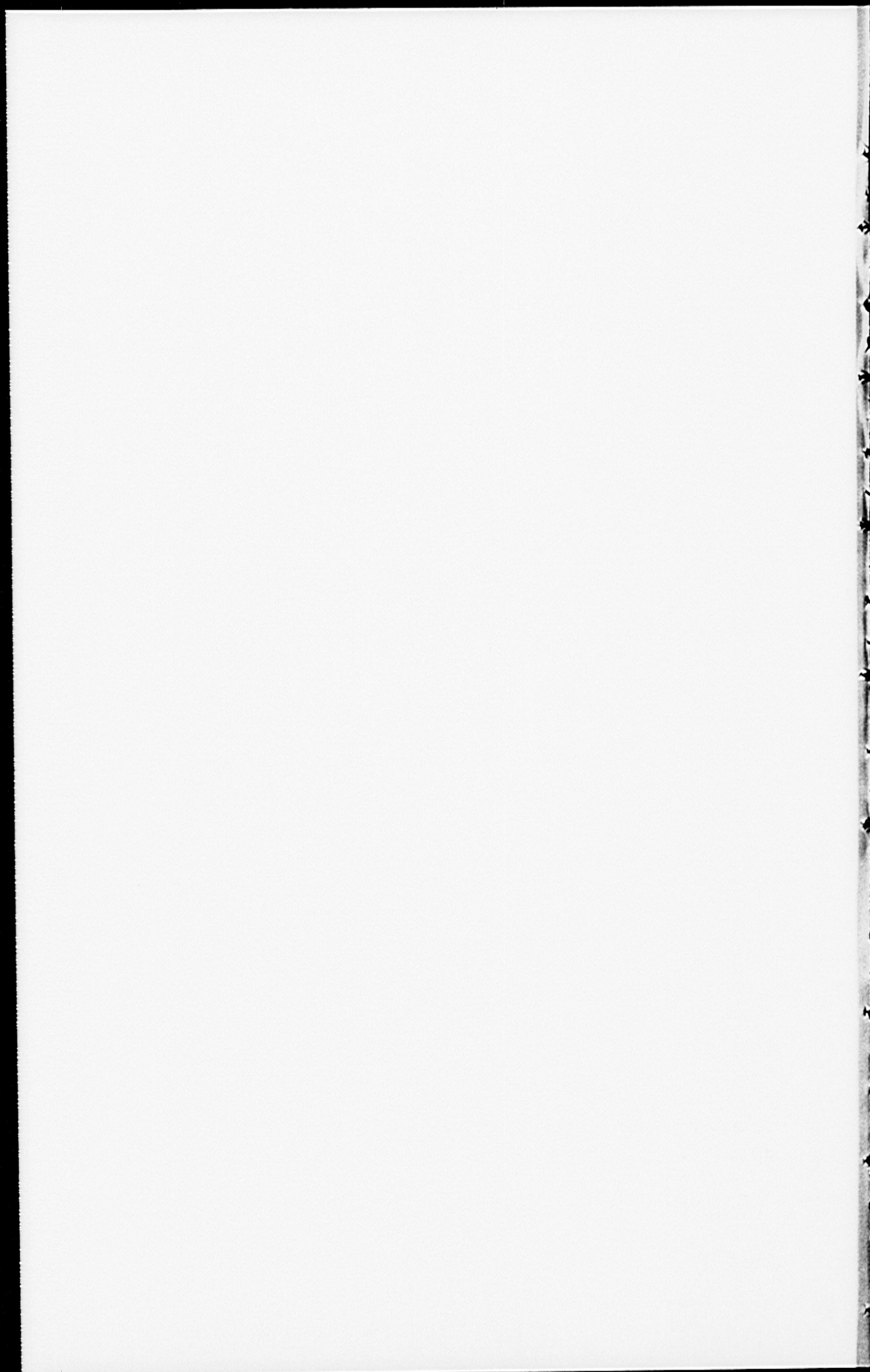
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,245

THADDEUS E. TANSIMORE, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant on October 30, 1961 was indicted for rape (22 D.C.C. 2801). A jury on March 6, 1962, found him guilty of assault with intent to commit rape (22 D.C.C. 501). By a judgment and commitment filed on April 5, 1962, he was sentenced to a term of imprisonment of from three to nine years. This appeal followed.

At trial, Audrey Cubbage, appellant's stepdaughter, testified that at about 9:00 P.M. on October 17, 1961 she had gone with appellant to his apartment for the purpose of obtaining money from him for her mother (J.A. 3, 4). After arriving at the apartment Audrey sat down, and appellant walked up to her and "put his hand between my

legs" (J.A. 5, 6). She "got up to go" but appellant "kept on, you know, standing against the door and wouldn't let me out". (J.A. 6). When Audrey "tried to get the chain off the door and everything, he pulled me over on the bed" (J.A. 6). She tried to "get away from him" but she was unable to "because he was holding me." (J.A. 6). Appellant choked Audrey, threatened to hit her with his fist, had "sexual relations" with her "against my consent" and concluded by putting "his mouth down on my privates" (J.A. 7). Audrey testified that on October 17, 1961 she was a virgin (J.A. 14). On the date of trial she was five months pregnant as a result of having had intercourse with appellant (J.A. 8, 29).

The underwear which Audrey wore on the night of the attack (J.A. 30, 31) was examined by an FBI agent and blood stains were found on it. (J.A. 32). Dr. John Perry examined Audrey on October 17th or 18th (J.A. 37) and observed "scratch-like abrasions on the anterior and posterior surfaces of her neck. Scratch-like abrasions were evident on her left shoulder." (J.A. 38). The genital findings showed the hymen to be perforated, a greenish whitish secretion in the vagina, and first degree tear on the vaginal floor and left vaginal vault which indicated "probably trauma". (J.A. 38) Intact sperm of recent origin (J.A. 39) was found on a smear taken from the crevix in her vaginal tract (J.A. 41).

Frances Brooks and Janice Hudson, neighbors of Audrey, testified that they talked with her about 10:00 o'clock when she returned from appellant's apartment. (J.A. 34, 36). She appeared to be "upset", "pale", "frightened" and "crying." (J.A. 34, 35) She related to them that she had been raped by her step-father, appellant Tansimore (J.A. 34, 36).

Officer Marlak arrested appellant on the evening of October 17, 1961 (J.A. 43, 45). He testified that before he said a word to him, appellant started "yelling and screaming he hadn't done anything". (J.A. 45) Appellant stated to the officer that "he wasn't anywhere around there" (J.A. 45). Later he admitted being with his step-

daughter but denied having done anything (J.A. 45, 46). Still at scene, appellant told the officer that "he wanted to be shot" (J.A. 46).

Appellant in his testimony admitted that his step-daughter had been to his apartment but denied that he had touched her or threatened her (J.A. 76). Doctor Charles Crittenden testified that appellant had an inguinal hernia, (J.A. 78) However, the Doctor further testified that this hernia would not prevent appellant from having sexual intercourse (J.A. 82).

The court then charged the jury on the offenses of rape and at the request of defense counsel (J.A. 99) on the offense of assault with intent to commit rape. At the conclusion of the charge appellant stated that he was satisfied with the charge (J.A. 114).

STATUTES AND RULES INVOLVED

Title 22, District of Columbia Code, Section 501 provides:

Assault with intent to kill, rob, rape, or poison.— Every person convicted of any assault with intent to kill or to commit rape, or to commit robbery, or mingling poison with food, drink, or medicine with intent to kill, or wilfully poisoning any well, spring or cistern of water, shall be sentenced to imprisonment for not more than fifteen years.

Title 22, District of Columbia Code, Section 2801 provides:

Whoever has carnal knowledge of a female forcibly and against her will, or carnally knows and abuses a female child under sixteen years of age, shall be imprisoned for not more than thirty years: *Provided*, That in any case of rape the jury may add to their verdict, if it be guilty, the words "with the death penalty," in which case the punishment shall be death by electrocution: *Provided further*, That if the jury fail to agree as to the punishment the verdict of guilty shall be received and the punishment shall be imprisonment as provided in this section.

Rule 30, Federal Rules of Criminal Procedure, provides:

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any

party may file written requests that the court instruct on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

Rule 31(c), Federal Rules of Criminal Procedure, provides:

Conviction of Less Offense. The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

SUMMARY OF ARGUMENT

The court did not commit reversible error by instructing on the lesser included offense of assault with intent to commit rape.

The Government's evidence established *prima facie* proof of each element of the crime of assault with intent to commit rape.

The instruction on the lesser offense was specifically requested by appellant and therefore he cannot now assign it as error.

No prejudice resulted to appellant from the instruction. The instruction was given as the result of a deliberate tactical trial decision made by appellant. He has no cause for complaint that the jury returned a verdict consistent with that strategy.

ARGUMENT

Appellant Was Properly Convicted of Assault With Intent to Commit Rape

Indicted for rape, appellant was convicted of the lesser included offense of assault with intent to commit rape. The sole ground upon which this conviction is attacked is that the court committed reversible error in instructing the jury on the lesser included offense. This contention is made despite the fact that appellant specifically requested the instruction and the fact that the court stated it would give the instruction only if so requested.¹ The contention is totally without merit.

The propriety of appellant's conviction for assault with intent to commit rape is demonstrable from the record. The elements of that crime are 1) an assault; 2) an intent to have carnal knowledge of the female; and 3) a purpose to carry into effect the intent with force and against the will of the female. *Robinson v. United States*, 78 U.S. App. D.C. 63, 136 F.2d 283 (1943). It cannot seriously be disputed that the Government's evidence, which is set forth in the counterstatement and which need not be repeated here, established *prima facie* proof of each of these elements. The consummation of the rape is abundant evidence of appellant's intent.

Since the Government had proven every element of the lesser offense, the court did not err in instructing, at appellant's request, on the offense. Rule 31(c) of Federal Rules of Criminal Procedure. See *Kinard v. United*

¹ Prior to the charge, the following colloquy occurred (J.A. 99):

THE COURT: I will submit it with—if you want—the lesser included offense.

MR. DAVID: The lesser.

THE COURT: The reason is the defendant denied he participated at all, but I will submit the lesser included charge of assault with intent to commit rape, if you request it.

MR. DAVID: Yes.

At the conclusion of the charge, appellant's counsel stated that he was satisfied. (J.A. 114)

States, 68 U.S. App. D.C. 250, 96 F.2d 522 (1938); *Stevenson v. United States*, 162 U.S. 313, 323 (1896).

Moreover, appellant is in the unsympathetic and untenable position of seeking reversal because of an alleged error which he deliberately invited. Rule 30 of the Federal Rules of Criminal Procedure does not permit such a contention or such a result. Having requested the instruction, appellant, under that Rule, cannot now assign it as error. *Dennis v. United States*, 341 U.S. 494 (1951), (footnote at p. 500); *Howgate v. United States*, 7 App. D.C. 217 (1895); *Weldon v. United States*, 87 U.S. App. D.C. 113, 183 F.2d 832 (1950). This Court started in the *Howgate* case:

We do not think that the defendant has any just or legal cause of complaint that instructions asked by himself, or the equivalent of them, have been given to the jury. (*Howgate v. United States*, 7 App. D.C. at 251)

While *Howgate* did not deal with an instruction on a lesser included offense, its rationale is equally applicable to the instant case.

Nor is this a situation where Rule 30 can be circumvented by the doctrine of "plain error affecting substantial rights."² As the Supreme Court stated in *Johnson v. United States*, 318 U.S. 189, 201 (1943) (quoting Mr. Justice Sutherland in *United States v. Manton*, 107 F.2d 834, 848):

"If the failure to enter an exception or assign error had been a mere inadvertence the matter might stand in a different light. But that view cannot be indulged. Plainly enough, counsel consciously and intentionally failed to save the point and led the trial judge to understand that counsel was satisfied. We see no warrant for the exercise of our discretion to set aside standing rules, so necessary to the due and

² It is submitted that to recognize an invited error as plain error affecting substantial rights would be for this Court to make our trial courts vulnerable to an infinite variety of trial tactics amounting to frauds on the court.

orderly administration of justice, and review the challenge to the legal accuracy of the charge where, as here, the failure of the judge to follow the text of the requested instruction was, at the last, induced by the action of counsel . . ."

Any other course would not comport with the standards for the administration of criminal justice. We cannot permit an accused to elect to pursue one course at the trial and then, when that has proved to be unprofitable, to insist on appeal that the course which he rejected at the trial be reopened to him. However unwise the first choice may have been, the range of waiver is wide. Since the protection which could have been obtained was plainly waived, the accused cannot now be heard to charge the court with depriving him of a fair trial. The court only followed the course which he himself helped to chart and in which he acquiesced until the case was argued on appeal."

Green v. United States, 95 U.S. App. D.C. 45, 218 F.2d 856 (1955), cited by appellant, affords him no assistance. Green was charged with an arson felony murder. He was found guilty of second-degree murder. This Court held that in the peculiar circumstances of that felony-murder the Government had made a *prima facie* showing of all of the elements of the crime charged, but had not proven the elements of second-degree murder. The court held, absent such evidence, that it was error for the court to instruct on second-degree murder, and it reversed Green's conviction because he stood convicted of a crime which the Government had not proven. That is not this case. As stated, *supra*, the Government's evidence here amply proved every element of the crime of assault with intent to commit rape.

Appellant was indicted for an offense carrying a maximum punishment of thirty years or the death penalty if the jury so recommended. Faced with the strong probability of being convicted of a crime carrying such severe penalties, appellant chose as a matter of understandable trial strategy to go to the jury also on the lesser included offense of assault with intent to commit rape which carried a maximum sentence of only fifteen years. The Gov-

ernment proved a *prima facie* case establishing each of the elements of rape and of assault with intent to commit rape. Appellant denied both offenses. The jury obviously disbelieved him. Under such circumstances, it is beyond comprehension how appellant could be prejudiced by a verdict, consistent with his strategy, finding him not guilty of the greater offense and guilty merely of the lesser offense. As Judge Youngdahl stated at the time of sentencing, the verdict was more than appellant deserved.³

It would appear under *Green v. United States*, 355 U.S. 184 (1957) that appellant cannot be retried for rape. Thus, if this Court reverses his conviction for assault with intent to commit rape, appellant goes free. For this Court to allow this drastic result—to allow appellant to go free and escape punishment for a heinous crime which the Government has proven he committed and which the jury has found he committed merely because the court gave an instruction he requested—would be to make a mockery of justice and the administration of criminal law in our courts.

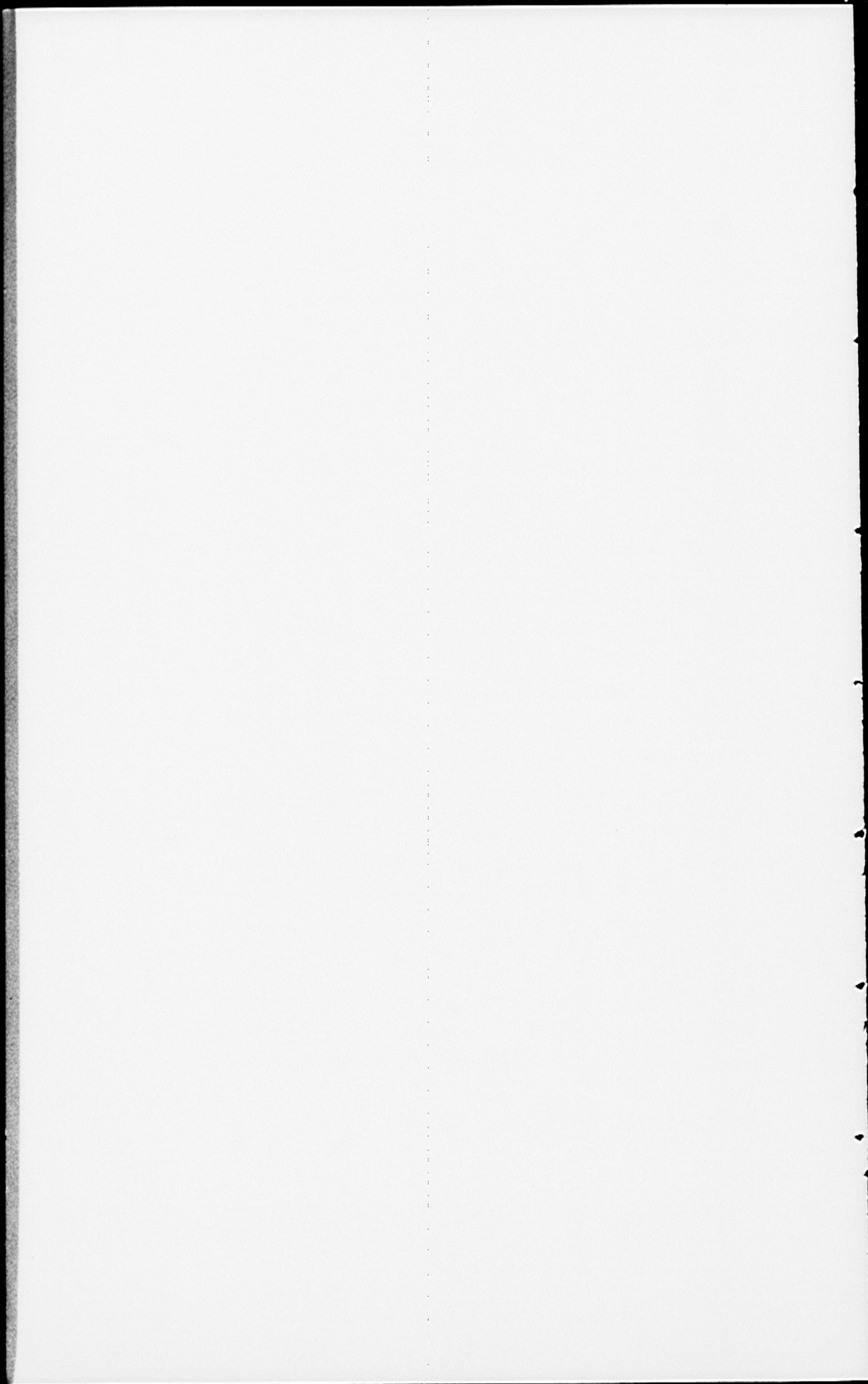
CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

DAVID C. ACHESON,
United States Attorney.

FRANK Q. NEBEKER,
JOEL D. BLACKWELL,
WILLIAM C. WEITZEL, JR.,
Assistant United States Attorneys.

³ See sentencing transcript filed June 4, 1962.



REPLY BRIEF FOR APPELLANT

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,245

Thaddeus E. Tansimore, Appellant,

v.

United States of America, Appellee.

APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

NOV 7 1962

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November 6, 1962

REPLY BRIEF FOR APPELLANT

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,245

Thaddeus E. Tansimore, Appellant,
v.
United States of America, Appellee.

APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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*Cases or authorities chiefly relied upon are marked by asterisks.

ARGUMENT

I. THE GIVING OF THE INSTRUCTION ON THE LESSER INCLUDED OFFENSE WAS ERRONEOUS

It is improper to instruct a jury on a lesser included offense to the charged offense, unless there is "some evidence which tends to bear on that issue," i.e., the issue of the commission of the lesser included offense. Stevenson v. United States, 162 U.S. 313, 315 (1896); Coleman v. United States, 111 U.S. App. D.C. 210, 295 F.2d 555 (1961) (en banc), cert. denied, 369 U.S. 813 (1962).

The Government is thus in error in its contention in its brief that the mere proof of the elements of the lesser included offense as part of the proof of the charged greater offense is sufficient to permit the submission of the lesser offense to the jury.^{1/} Such is demonstrably not the law: If all the elements of the crime charged have been prima facie proved, the submission of the lesser offense

^{1/} Appellant does not question that every forcible rape includes all the elements of assault with intent to commit rape, Appellant's Main Brief, p. 18; the issue presented is whether this theoretical offense should have been given independent consideration in Appellant's trial.

is improper unless evidence is presented negating or questioning the unique distinguishing element of the greater offense. Only if such evidence is introduced, is an issue raised which would permit the jury to find that the lesser offense was committed. See Sparf v. United States, 156 U.S. 51 (1895); Burcham v. United States, 82 U.S. App. D.C. 283, 163 F.2d 761 (1947).

The Burcham decision -- cited in Appellant's main Brief and decided subsequent to the cases cited by the Government -- is particularly relevant, for there the Government proved every element of assault with a dangerous weapon; yet it was held that the submission of the lesser included offense of simple assault was not called for, as no evidence had been introduced placing the existence of the dangerous weapon -- the distinguishing factor between the two offenses -- in dispute. Compare Young v. United States, No. 16994, D.C. Cir., Oct. 18, 1962 (evidence negating robbery calls for simple assault charge where indicted for assault with intent to rob).

The rule may be more generally stated: Where a defense constituting total innocence is made, there is not placed separately in issue each element of the charged offense, but only the whole of such offense. Thus the separate submission to the jury of only certain elements, i.e., the

lesser included offense, is improper. E.g., Burcham v. United States, supra; see People v. Mussenden, 308 N.Y. 558, 127 N.E.2d 551 (1955); State v. Herron, 349 S.W.2d 936 (Mo. 1961).

As set forth in Appellant's main Brief, pp. 23-25, and amply corroborated by the Government's Counterstatement of the Case in its brief, the evidence in the instant case presented an irreconcilable conflict between the testimony of the prosecutrix and the defendant. Miss Cubbage's testimony, amply supported, bespoke of a brutal and consummated rape, no element of the offense lacking or in doubt. The Appellant's testimony, also corroborated, was the complete negation of any wrongdoing. No evidence was introduced bearing on just the issue of assault with intent to commit rape; no evidence was presented which could rationally be construed as merely challenging the consummation of the rape (nor does the Government in its brief suggest this). The only defense evidence called for Appellant's acquittal. Thus, the nature of the defense, under the cases cited, made the submission of the lesser included offense to jury erroneous.

II. THE EVENTS AT TRIAL DO NOT BAR APPELLANT FROM THE
RELIEF HE SEEKS

Contrary to the Government's statement that the position taken by Appellant is "untenable,"^{2/} the plain prejudice to Appellant's rights resulting from the giving of the contested instruction has in the past led this Court to consider the issue presented pursuant to Fed. R. Crim. P. 52(b), even absent compliance with Fed. R. Crim. P. 30.

Most recently, in Hansborough v. United States, No. 16998, D.C. Cir., Sept. 27, 1962, this Court gave careful consideration to the allegation that the submission of the lesser included offense was prejudicial and reversible error, even though the issue was first raised on appeal and the instruction was unchallenged at trial. Although the facts in the Hansborough case supported the submission, this Court did not suggest, as does the Government, that consideration of the alleged error was foreclosed by the rigid application of Rule 30.

^{2/} Appellant sees little relevance to considering whether he may or may not garner the Court's sympathy; the issue of prejudice presented is a legal one and so to be decided.

Even more in point, of course, is Green v. United States, 95 U.S. App. D.C. 45, 218 F.2d 856 (1955), in which this Court reversed Green's conviction of second-degree murder on the ground that the instruction on this offense, which his trial counsel had requested, Brief for Appellant, pp. 3-4, Green v. United States, was unsupported by any evidence raising the issue.^{3/}

Appellant stands in the same position as Green: He was convicted of an offense submitted to the jury without evidence raising the issue that only such an offense might have been committed. Despite the Government's gratuitous inclusion of the irrelevant remarks of the sentencing court, what Appellant "deserves" is to have his guilt or innocence determined on the evidence presented, without permitting the jury "arbitrarily to disregard the evidence," Sparf v. United States, 156 U.S. at 63.^{4/}

^{3/} The Government's shallow exposition of the Green case will not bear analysis in light of the Sparf and Burcham decisions, supra, in which the giving of the charge on the lesser included offense was properly refused even though the prosecution had "proved" the lesser offense as well as the greater. The prejudice to Green was the compromise of his right to acquittal, by the submission of an issue on which there had been no evidence presented. This prejudice can be present in cases other than the "peculiar circumstances of felony-murder."

In addition, the Green decision supports the use of Rule 52(b), a point carefully avoided by the Government.

^{4/} A reversal does not mean, as the Government suggests, that Appellant necessarily goes free; nor is this the relief Appellant seeks. The Government may properly try him on the assault charge, thus for the first time bringing before a jury the simple decision of guilt or innocence which should have been presented at the trial below.

CONCLUSION

Appellant submits that the judgment of conviction
should be reversed.

Respectfully submitted,

/s/ Eugene I. Lambert
EUGENE I. LAMBERT
701 Union Trust Building
Washington 5, D. C.

Attorney for Appellant
(Appointed by this Court)

November 6, 1962

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

_____)
Thaddeus E. Tansimore,)

Appellant)

v.)

No. 17,245

United States of America,)

Appellee)
_____)

Certificate of Service

I certify that the Reply Brief for Appellant was served
on William C. Weitzel, Jr., Assistant U. S. Attorney, Counsel for
Appellee, by leaving a copy at his office, U. S. Court House,
Washington 1, D. C., this day of November, 1962.

Eugene I. Lambert

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,245

THADDEUS E. TANSIMORE,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

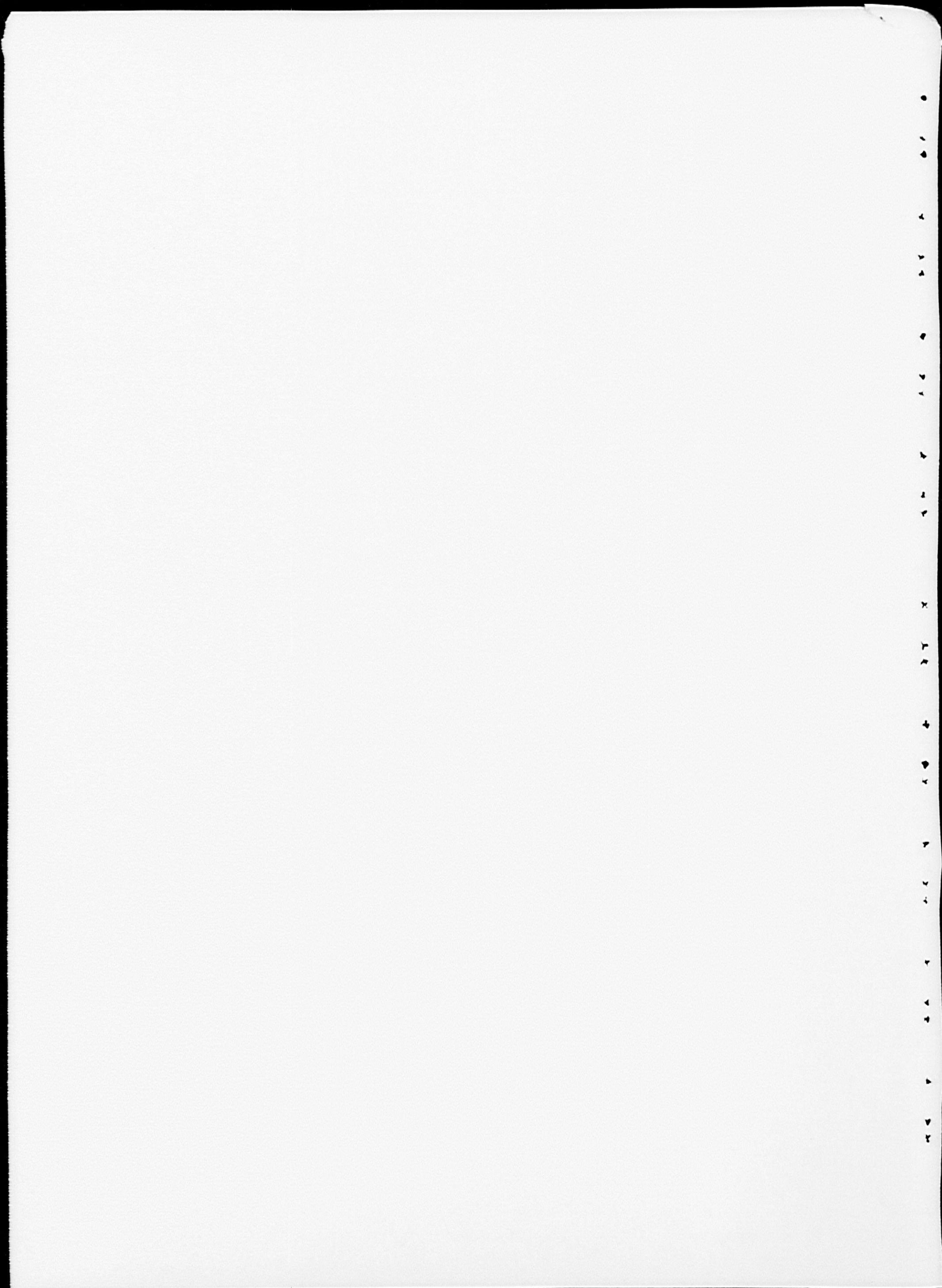
APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

SEP 20 1962

Joseph W. Stewart

CLERK



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JOINT APPENDIX

[Filed in Open Court October 30, 1961]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Impanelled on August 31, 1961, Sworn in on September 5, 1961

THE UNITED STATES OF AMERICA)	Criminal No. 925-61
v.)	Grand Jury No. 1252-61
THADDEUS E. TANSIMORE)	Violation: 22 D.C.C. 2801 (Rape)

The Grand Jury charges:

On or about October 17, 1961, within the District of Columbia,
Thaddeus E. Tansimore had carnal knowledge of a female named
Audrey R. Cubbage, also known as Audrey R. Bolyar, forcibly and
against her will.

/s/ David C. Acheson
Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

/s/
Foreman

[Filed November 3, 1961]

PLEA OF DEFENDANT

On this 3rd day of November, 1961, the defendant Thaddeus E.
Tansimore, appearing in proper person and by his attorney James C.
Toomey, being arraigned in open Court upon the indictment, the
indictment being read to him, pleads not guilty thereto.

Defendant's motion to reduce bond heard, argued and denied by the Court without prejudice.

The defendant is remanded to the District of Columbia Jail.

By direction of

MATTHEW F. MC GUIRE
Presiding Judge
Criminal Court # Assignment

Present:

HARRY M. HULL, Clerk

United States Attorney

By: /s/ H.G. Dodd
Deputy Clerk

By: Joel Blackwell
Assistant United States Attorney

Edna Romig
Official Reporter

EXCERPTS OF TRANSCRIPT OF PROCEEDINGS

1 Washington, D.C.
Thursday
March 1, 1962

The above-styled cause came on for further hearing before THE HONORABLE LUTHER W. YOUNGDAHL, United States District Judge, and a jury, at approximately 10:00 o'clock a.m.

* * * * *

4 AUDREY R. CUBBAGE

was called as a witness on behalf of the Government, was duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. Will you state your full name, please? A. Audrey Regina Cubbage.

Q. Now Miss Cubbage, where do you live? A. I'm living with my mother now.

Q. Where is that? A. 1747 Corcoran Street.

Q. Directing your attention to October 17, 1961, where were you living? A. 1302 R Street, Northwest.

Q. How old are you? A. Eighteen.

Q. When were you eighteen? A. January 2nd.

5 Q. Of this year? A. Yes.

Q. Do you know the defendant in this case, Thaddeus E. Tansimore?
A. Yes, he is my stepfather.

Q. How long have you known him? A. Since I was little.

Q. Directing your attention to October the 17th of last year, did you have occasion to see your stepfather, the defendant in this case, Thaddeus E. Tansimore? A. Yes.

Q. Where did you see him? A. He came up to our apartment and my mother had said that we were supposed to get some money from him because she was out of work.

THE COURT: Just a moment. That part of the answer may be stricken and the jury should disregard it. It is hearsay.

BY MR. BLACKWELL:

Q. Now you say he came up to your apartment? A. Yes.

Q. And that was where, at 1302 R Street, Northwest? A. Yes.

6 Q. And when he came up, what did he say to you? A. He said that he didn't have any money with him, but he had it at home.

Q. And did he say anything else after he said that? A. No. He just told me to come with him.

Q. That's what I am asking you; did he say anything else? A. No.

Q. He didn't say anything else after he told you he had the money at home? A. No.

Q. Nothing else was said? A. No.

Q. Nothing else was done; is that right? A. He waited until I got the key.

Q. Why did you come to get the key, Miss Audrey? A. I went and got the key and my coat to leave.

Q. For what purpose? A. To leave with him.

Q. And you decided you were going with him? A. Yes.

Q. Didn't you say something a few minutes ago to the effect that he requested you to go with him? A. Yes.

7 Q. Did he ask you to go with him? A. He said he had the money at his house, he didn't say he had it with him.

Q. When he said that you decided to get your coat and go with him; is that right? A. Yes.

Q. And you did go with him? A. Yes.

THE COURT: What key was this that you were talking about?

THE WITNESS: The key to our house, our apartment.

BY MR. BLACKWELL:

Q. The apartment where you were living? A. Yes.

* * * * *

Q. Now I believe you testified the key which you were looking for was the key to your apartment? A. Yes.

Q. Was anyone home when he came there? A. No.

8 Q. By the way, do you have any sisters and brothers? A. Yes.

Q. Where were they then? A. They were outside.

Q. What time of day or night was this, approximately? A. It was about nine o'clock; somewhere around nine.

Q. A.M. or P.M.? A. P.M.

Q. And now you say you left to go with him to his apartment. Now what means did you have to get to his home or apartment, wherever he lived, that is, the defendant? A. He had his car.

Q. And where did he live? A. On 15th Street.

Q. Do you know the address? A. No, I don't know it offhand. I just know it's 15th Street.

Q. Well, do you know the streets its between? A. Yes.

Q. What streets is it between? A. 16th Street and 14th Street; it's on the left side.

Q. Well, I'm sorry, I didn't make myself clear. I would like to ascertain or find out the block, which lettered streets running east and west is this block between? A. I don't exactly know.

Q. Do you know whether it was here in the District of Columbia or not? A. Yes.

Q. And did there come a time when, Miss Cubbage, when you arrived at the defendant's home? A. Yes.

Q. And how long was that after you left R Street, approximately; did it take very long? A. No.

Q. Where did he park his car when he arrived there? A. He parked it on the street, the street that was going -- the street just around the corner from 15th Street.

Q. Now did he have any conversation with you on the way over to his home from your home? A. He just talked about, you know, momma--

Q. I'm sorry, I didn't hear. A. He talked -- conversation in general, and did I have a job yet. That's all.

Q. And then did there come a time, after he parked the car, that you went into his home? A. Yes.

Q. And what part of that home or house did you go into? A. To the basement.

Q. And what part of the basement, front or back? A. Front.

Q. Was anyone in that apartment or room when you went in with the defendant? A. No.

Q. Well now, tell us what he said when he arrived in this room with you. A. He went in and shut the door and I sit down, and he poured a drink and I had to take off my coat. And he put his hand between my legs and he said, "I know you have had that before." I said --

MR. DAVID: Just a minute. I didn't hear that.

BY MR. BLACKWELL:

Q. You have to speak more distinctly, and not so fast, Audrey. Repeat what he did after you took your coat off. A. I said I didn't take my coat off.

Q. I'm sorry. A. I just sat down. And he walked up to me and he put his hand in between my thighs, and he said, "I know you've had that before."

Q. And what did you say to that? A. I got up to go because I knew something was wrong, and I got up to get out of the door, and he stopped me at the door.

11 Q. How did he stop you? A. He told me not to go, he kept on, you know, standing against the door and wouldn't let me out, you know, talking and everything.

Q. And what happened next, tell His Honor and these ladies and gentlemen of the jury everything. A. I started to talking loud and everything, and he told me to shut up. When I tried to get the chain off the door and everything, he pulled me over on the bed. And I tried to get away from him and everything, but --

Q. You say you tried to get away from him? A. Yes.

Q. Why couldn't you get away from him? A. Because he was holding me, he wouldn't let me out.

Q. Did he say anything else to you then? A. He just -- he just said all kinds of vulgar things.

Q. He said all kind of vulgar things? A. Yes.

Q. Well now, I am not asking you to repeat what he said, but in what respect was he saying these vulgar things? A. He wanted me to have a relationship with him.

MR. DAVID: Objection. In what respect? This calls for a conclusion.

THE COURT: You better state the conversation.

* * * * *

12 BY MR. BLACKWELL:

Q. State what this defendant said to you, Audrey. A. I just can't remember every little thing he said.

THE COURT: As near as you can remember, state substantially what you remember that he said.

THE WITNESS: All I know, he pulled the light off that was on the bed, because it was a little red light there. He pulled the light off on the bed and everything and he held me down. When I told him I wanted to go home and everything, he told me to shut up and everything.

He told me, he kept on saying he know I have had it before, and different things. I just can't remember everything he said.

BY MR. BLACKWELL:

Q. Well, did there come a time when he actually had sexual relations with you? A. Yes, he did.

Q. And was that with your consent? A. It was against my consent.

Q. Did you indicate to him that you did not want to have sexual relations with him? A. Yes.

13 Q. Why did you have sexual relations with him against your consent?
A. Because he forced me; he choked me.

Q. Were you afraid of him? A. Yes, I was. He also told me he would hit me with his fist too.

Q. Now after he had sexual relations with you, did he do anything else? A. Yes.

Q. What did he do? A. He put his mouth down on my privates. He put his mouth to me.

Q. Now after these two acts had been completed, what did you do after he finished? A. I told him I was going to tell my mother.

Q. And what did he say to that, Audrey? A. He said he didn't care, I could tell her, she wasn't giving him anything, all he spent his money for was women and whiskey.

Q. He told you that that night? A. Yes.

Q. Now, did there come a time when you left these premises?
A. Yes, I told him I would walk home and he said -- I told him, "I'll
14 leave myself," and he said, "No, I'll take you home," and he kept
on persisting that he would take me home.

Q. Did he take you home? A. Yes.

Q. And what else happened, if anything, on the way home? A. He didn't -- he just took me home.

Q. Well, was anything further said about any money? A. Yes, he give me the money that he was supposed to give me in the first place, and he told me if I ever needed any more or anything like that, he would give it to me, something like that.

Q. Now did he give you this money before the sexual relations or after the sexual relations? A. After the sexual relations.

Q. Did you have any agreement with him when you had sexual relations with him that he was going to give you any money? A. No.

Q. What was this money for? A. This was for my mother. See, my mother was on her job and we had ran out of all our money, so it was just to keep us until she came home because he gave money every week.

15 Q. Well, had you spent some money for something else, an emergency or something, just before this? A. Yes. Our dog got hit that Sunday by a car and I took her to the veterinarian and it cost \$10 deposit down on it. That was all we had. The dog was real sick.

Q. Did you tell the defendant about that? A. Yes.

Q. Now Audrey, as a result of your sexual relations, these sexual relations which you have described with the defendant, are you presently pregnant? A. Yes.

Q. And after you arrived back home, what did you do, if anything? A. I walked on up to my front, up the steps, and the two ladies that was watching out for us was standing on the front, Mrs. Brooks and Mrs. Hudson, and I was crying and they asked me what was wrong with me, and I told them what had happened, that my stepfather --

Q. Was this just as soon as you had gotten out of the defendant's car? A. Yes.

Q. And you were crying you say? A. Yes.

Q. And they asked you what happened, Mrs. Hudson and Mrs. Brooks? A. Mrs. Hudson was in the house, but Mrs. Brooks was out there with her mother.

16 Q. And Mrs. Brooks asked you what had happened? A. Yes.

Q. Did you tell her at that time? A. Yes, I didn't even go in the house.

Q. Did there come a time when Mrs. Hudson came on the scene?
A. Yes, she called her.

Q. Who called Mrs. Hudson? A. Mrs. Frances Brooks.

Q. Did you tell Mrs. Hudson what happened? A. Mrs. Frances Brooks told her.

Q. In your presence? A. Yes.

Q. Then what happened, if anything? A. She said we'll go and call your mother and tell her what happened, she said, because she'll have to know.

Q. Did you do that? A. Yes, we went up to the corner, to the telephone booth, and called momma.

Q. You say "we," to whom are you referring? A. Mrs. Janice Hudson.

17 Q. As a result of your conversation with your mother, did someone call the police? A. Yes, she told us to call the police.

THE COURT: Will you state how long it was from the time you left the premises of the defendant when you told Mrs. Brooks what had happened? About how long was it?

THE WITNESS: It was right after.

THE COURT: Well, can you tell me about how many minutes?

THE WITNESS: I don't know how many minutes, I mean, it was just right after.

THE COURT: Can you tell approximately how long it was? How long did it take you to get from the basement apartment to where you saw Mrs. Brooks?

THE WITNESS: I guess about a minute or two.

THE COURT: How far away is it from the basement apartment to where you live, how many blocks?

THE WITNESS: About three.

THE COURT: Three blocks?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. BLACKWEELL:

Q. Let me ask you this: How long was it after you alighted from the defendant's car in front of 1302 R Street was it before you told these people that? A. It was exactly right after, because he let me out there

18 on the corner and I went up into my place and they were standing there because their porch, their front is right next to ours.

Q. Did I understand you to say he let you out on the corner?

A. Yes.

Q. Then he did not let you out right in front of the house; is that correct? A. No.

Q. Now after the police were notified, did the police respond?

A. Yes.

Q. And as a result of the police coming, did there come a time when you were taken in custody to the Police Department, by some member of the Police Department to D.C. General Hospital for a medical examination? A. Yes.

Q. Was a medical examination performed on you in the D.C. General Hospital? A. Yes.

Q. Now, Audrey, prior to what you have told us happened, on October 17th, the evening of October 17th, in the basement of this 15th Street address here in the District of Columbia by the defendant in this

19 case, had this defendant ever before, since you had known him, molested you in any manner? A. No.

Q. Did you look upon him as a father, stepfather? A. Yes. I also learned to respect him as my stepfather. My mother has always made me treat him as so.

Q. And it is your testimony that he never mistreated you or made any advances to you or toward you prior to this evening at all; is that correct? A. No.

Q. Were you surprised on this particular evening when he did what he did? A. Yes.

MR. DAVID: Objection, if it please the Court. Counsel is continually leading the witness.

THE COURT: It was leading, but the answer is in.

MR. DAVID: I move it be stricken, if it please the Court.

THE COURT: The answer may be stricken.

BY MR. BLACKWELL:

Q. How many sisters and brothers do you have? A. I have one half-sister and two half-brothers.

Q. How old is your little half-sister? A. Eleven years old.

29

Q. Is she here today? A. Yes.

MR. BLACKWELL: Thank you very much, Audrey.

I have no further questions. You may inquire.

MR. DAVID: Thank you.

CROSS EXAMINATION

BY MR. DAVID:

Q. Miss Cubbage, how many names are you known by? A. I am known as Audrey Bolyar; one, really.

Q. What is the other name? A. Cubbage.

Q. Why do you carry two names? A. Because Cubbage is my mother's maiden name and Bolyar is the name of the people I stayed with in Pennsylvania; they raised me since I was eight years old.

Q. Do you have a birth certificate? A. Yes.

Q. Have you ever seen it? A. Yes.

Q. What is the name of your birth certificate? Audrey Regina Cubbage.

Q. Audrey Regina Cubbage? A. Yes.

Q. So that is your real name; is that right? A. Yes.

21

Q. Bolyar is not your real name? A. No.

Q. Now, what year were you born, Miss Cubbage? A. 1944, January second.

Q. Where were you born, Miss Cubbage? A. Washington, D.C.

* * * * *

Q. Where is your father, Miss Cubbage? A. He's in the city.

Q. He is in the District? A. Yes.

Q. Do you know him? A. Yes, I do.

Q. Just a little while ago the prosecutor for the Government asked you if you had any brothers and sisters; do you remember that question?
A. Yes.

22 Q. You told him, I believe, you had one half-sister and two half-brothers? A. Yes.

Q. Don't you have another half-sister? A. Yes.

Q. Would you tell the Court and jury please why you didn't tell the prosecutor about that half-sister when you answered the question?
A. Because I thought he was talking about his children.

Q. He didn't ask about his children; he said sisters and brothers.
A. Well, I have more than that altogether, my father has children too.

* * * * *

Q. Will you tell us please the names, ages, if you know, the father and mother and the address of all your sisters and brothers? A. Joyce Tansimore, she's eleven; and Carl Tansimore, I think he is nine or eight, or something; and Thaddeus, he's twelve.

23 Q. What is Thaddeus' last name? A. Tansimore

Q. Where does Thaddeus live? A. With his grandmother.

Q. Where is that? A. In Culpepper.

Q. Where do Joyce and Carl live? A. With my mother.

Q. Where is that? A. 1746 Corcoran Street -- '47 Corcoran.

Q. Is it '46 or '47? A. 1747 Corcoran Street.

Q. Is that Northwest Washington, D.C.? A. Yes.

Q. Continue please giving us the other names of your brothers and sisters, all of them. A. Pamela Pinnell.

Q. Pamela -- ? A. Pinnell.

Q. Pinnell. Is she a daughter of Mr. Tansimore? A. No. I don't know who she's a daughter of.

Q. Is she a daughter of your mother? A. Yes.

24

Q. How old is she? A. I don't know.

Q. About how old is she? A. I guess around five or something.

Q. Five years old; about five years old? A. I guess.

Q. Where does she live? A. She stays with her godmother.

She lives in Arlington, Virginia.

Q. With whom does she live? A. With her godmother's mother, Mrs. Dodson.

Q. Miss Cubbage, do you know how long your mother and your stepfather have been separated? A. I guess around nine years, something like that.

Q. About nine years? A. I don't know for sure.

Q. That's an approximation, and it's pretty close, isn't it?

A. I guess so.

Q. Are there any other children related to you? A. No.

Q. Miss Cubbage, do you understand why all of us are here today?

A. Yes.

Q. Why are we here? A. Because my stepfather raped me.

25

Q. When your stepfather, as you said on direct examination, put his hand between your thighs and said you have had that before, did you answer him? A. No.

Q. Why not? A. I just looked at him, and I got up. There was nothing for me to say.

Q. Had you had that before?

MR. BLACKWELL: I object, if Your Honor please, it's immaterial and irrelevant.

THE COURT: She may answer the question.

The question is indefinite. You better make it more specific.

BY MR. DAVID:

Q. When Mr. Tansimore said to you as he placed his hand between your thighs, and he said you have had that before, what did you take it that he meant? A. I thought he was trying to make an advance towards me.

Q. No. Maybe you misunderstood my question. When he said you have had that before, did you know what he meant? What did you understand it to mean? A. I said I thought he was trying to make an advance towards me, that's why I got up.

Q. Yes. But what do you think he meant by having said you have had that before?

26

MR. BLACKWELL: I submit, Your Honor, she has answered.

MR. DAVID: I submit she has not answered that question.

THE COURT: She may answer the question.

THE WITNESS: I thought he just thought it was something smart, that's all.

BY MR. DAVID:

Q. You have had that before. What is that? A. I don't know.

Q. You didn't know what he meant? A. I just knew he meant something smart.

Q. Like what? A. I just thought he wanted to be smart with me. He put his hand -- he has no business putting his hand between my thighs and saying a thing like that to me.

Q. All right. When he said you have had that before, what did you think he meant at that time?

THE COURT: That is repetitious, counsel. You have asked it four or five times. She has answered it now, I believe.

BY MR. DAVID:

Q. Had you had that before?

THE COURT: You better specify what you mean by "that."

27

BY MR. DAVID:

Q. Miss Cubbage, have you ever engaged in sexual relations with any male person prior to this date in question here? A. No.

Q. Then you were a virgin on this date? A. Yes.

Q. Were you graduated from high school, Miss Cubbage? A. Yes.

Q. When? A. June 8th of 1961.

* * * * *

Q. Would you give us that date again please, the date you graduated from high school? A. I think it was June 8th -- wait a minute, June 10th. Let me see. I think it was June 10th.

Q. What year? A. Of '61, this past June, the past summer.

Q. 1961? A. Yes.

Q. From which high school were you graduated? A. Altoona Catholic High School.

28 MR. BLACKWELL: I didn't get the name of that high school, Your Honor.

THE WITNESS: Altoona Catholic High School.

MR. BLACKWELL: Is that Altoona, Pennsylvania?

MR. DAVID: Just a moment.

MR. BLACKWELL: I want to find out what she is talking about.

THE COURT: She may state the name of the high school again.

THE WITNESS: Altoona Catholic High School.

MR. BLACKWELL: Thank you.

BY MR. DAVID:

Q. Miss Cubbage, I believe you stated heretofore that Mr. Tansimore came to your apartment. Tell us please why he came to your apartment at 1302 R Street, Northwest, if you know. A. He said to give me the money.

Q. What money? A. The money that he always -- the money he is supposed to give us until my mother came home.

Q. Had he given you any money one or two days before this particular date? A. He had given us money that last week, the past week before that happened.

Q. How many days before October 17th? A. It was Saturday.

29 Q. And what day was October 17th? A. Tuesday.

Q. Tuesday. Was it his custom to give you money that often?
A. Well, my mother, since this had come up --

Q. Since what came up? A. About the dog getting hurt, we didn't have any money until she came home. She sent my little step-brother down there to tell him, but he come up with the word that that was no way to transact business, by sending my step-brother, and he said he didn't have the money with him, that he had it down there.

Q. Your little step-brother, apparently from what you say, went to the house -- correct me if I'm wrong. A. He went Sunday.

Q. He went Sunday? A. Yes.

Q. To get some money from Mr. Tansimore? A. But he didn't give it to him.

* * * * *

THE COURT: Complete your answer.

THE WITNESS: Yes, he did go down Sunday.

BY MR. DAVID:

Q. On Saturday Mr. Tansimore had given you some money?

30 A. My little step-brother and I went down Saturday night and he had given us some.

Q. How much money did he give you Saturday? A. I don't remember exactly how much.

Q. Approximately, was it \$25? A. No, he never gives us that much.

* * * * *

THE WITNESS: I think it was five. It was either five or seven, because he said that's all he always gives us, around that much.

BY MR. DAVID:

Q. On October 17, how much did he give you? A. Seven.

Q. Seven dollars? A. Yes.

Q. Are you definitely positive it was \$7 and not \$8? A. No, I'm not positive.

Q. You are not. Now, when he gave you this money, whatever it was, \$7 or \$8, did he ask you for whom or for who is this money; is this money for you or is it for the children? A. No, he knew who it was for.

Q. How do you know that he knew? A. I know that he knew.

31

Q. How do you know? A. Well, he didn't come right out and say it, but I know he knew. My little brother went down there and told him what had happened and he explained to him what my mother had told him to say.

Q. And had Mr. Tansimore ever given you money for yourself and not for the little children? A. Sometimes when he would be up there he'd give everybody else some change, he would give me some too.

Q. And it is your testimony today, under oath, that on this particular date Mr. Tansimore did not ask you for whom is this money, you or the children; are you sure? A. Yes, I'm sure. He knew who it was for.

Q. But you haven't told us how you know he knew who it was for. He had just given money for the family on Saturday, had he not?

A. That was already explained to him. My little stepbrother told him. When he came up there he knew. He never gives me no \$7. If he'd been up there visiting, he'd give Joyce and Carl money, he wouldn't leave me out, he would give me a little something too, but he'd never give me \$7.

Q. Like how much would a little something be? A. He would give me a dollar.

Q. Did he ever give you three dollars? A. No.

32

Q. Did he ever give you two dollars? A. I don't know.

Q. I beg pardon? A. No.

Q. He never did give you two dollars? A. No.

Q. Not in your life he has never given you two dollars? A. I don't know. I guess not.

Q. You're not sure? A. I'm not sure in my life-time, but I don't know. I know he's given me a dollar.

Q. All right. Now when you and Mr. Tansimore left your home, where was his car parked? A. It was parked across the street.

Q. Opposite the front of your house? A. Yes, opposite.

Q. That would be then 1303 R Street, Northwest; is that right?

A. 1302; we live at 1302.

Q. You used to live at 1302; is that right? A. We never lived at 1303.

Q. If his car were across the street, wouldn't it be in front of 1303? The car was across the street and not in front of your house?

33 A. Yes.

Q. Thank you.

What kind of car does your step-father have? A. It's a black car, I don't know the make of it.

Q. Do you drive a car? A. No.

Q. Now on going to his apartment or his room, where did he park the car? A. He parked it on -- right around the corner from 17th Street, the street that runs -- I know it was right around the corner from 17th Street.

Q. Do you know between what streets on 15th Street Mr. Tansimore lived? A. I don't know the streets very well. I just know it was -- we crossed the street and went up, it was around the corner.

* * * * *

35 Q. Now you said, Miss Cubbage, I believe that you parked somewhere near 17th Street; is that right? A. Yes.

Q. So then that would be two blocks north of this street; this is 15th.

THE COURT: You are now pointing south with your finger.

MR. BLACKWELL: No, Your Honor, 17th Street would be west of 15th Street in the District of Columbia. Your Honor could take judicial notice of that.

MR. DAVID: I stand corrected.

BY MR. DAVID:

36 Q. Then it's two blocks beyond this in a westerly direction, you parked near 17th Street; is that correct? A. I know it was the next street to where he lived, but it was up the street, around the corner. The street that goes this way (indicating). He lives this way here, and it was the street that goes up here, across the street and up the street around the corner.

Q. Was it as far away as 16th Street that he parked?

MR. BLACKWELL: If Your Honor please, she had indicated --

THE COURT: She may answer if she knows.

THE WITNESS: I don't know the next street. I don't know the name of the next street where he lived.

BY MR. DAVID:

Q. Why did you mention 17th Street? You must have crossed that street. A. I said it was a street this way. He lives facing this way here. It's this way but it's around the corner and up. You cross the street and then go -- the street that runs this way (indicating).

Q. Do you know whether you were north or south of his house or his street when he parked the car? A. North.

Q. You were north of his street? A. Yes.

Q. Of his house rather; I'm sorry. A. Yes.

37 Q. How many blocks north of his house were you when you parked the car? A. It was a block up, around the corner.

Q. One block up?

MR. BLACKWELL: And she also said around the corner, Your Honor.

BY MR. DAVID:

Q. Now how many blocks around the corner was it? A. About one.

Q. About one? A. Yes.

Q. Could it have been two? A. I didn't stop to count. I didn't know whether it was one or two. I just know I believe that's the way it was, up a block, I know it was around the corner.

Q. Do you have any idea how long it took you and Mr. Tansimore to walk from his car to his room? A. Just a few seconds.

Q. A few seconds? A. A minute I guess. I don't know. Just to get out of the car and walk around the corner. He didn't park it that far.

Q. When you arrived at Mr. Tansimore's place of abode, did you see anybody in front of the house? A. No.

38 Q. Did you see anybody when you entered the house? A. No.

Q. Did you hear anybody in the building? A. No.

Q. Do you know whether the building was empty? A. No, I don't know if it was empty or not. I didn't hear anything.

Q. When Mr. Tansimore is supposed to have put his hand on you, did you hit him? A. No, I didn't hit him, I just got up.

Q. When you went and stood near the door, what did Mr. Tansimore do? A. He didn't want me to go, he kept on talking to me and told me -- he just wouldn't let me out the door. I said, "Let me out please," and he kept on telling me to shut up and be quiet and just a minute, wait a minute, and stuff like that.

Q. Was he holding you at that time? A. Yes, he held me.

Q. Where was he holding you? How was he holding you? A. By my arm I imagine, I can't remember just where he --

Q. You can't remember how he was holding you? A. No, but I know he kept me from going out the door.

Q. Did he have a knife in his hand? A. No.

Q. Did he have a hammer? A. No.

39

Q. Stick? A. No.

Q. Gun? A. No.

Q. Club? A. No, he had nothing in his hand.

Q. Isn't it true that the thing that stopped you from going out of the room was his talk more than anything else, wasn't it; he kept talking to you? A. Yes. He just wouldn't let me out the door, when I tried to get out he pulled me back.

Q. And he was talking to you all the while, wasn't he? A. Yes. And every time I would beg for him to let me out and everything, he would tell me to shut up.

Q. Did you scream? A. No, I didn't scream because at one time he choked me. He wouldn't let me talk loud. He wouldn't -- when I would ask him to please let me out and everything, he would just -- he wouldn't let me out. After he got me on the bed I could not get up.

Q. Well at the time you say that he choked you, what were you doing while he was choking you? A. I was laying there taking it.

Q. Just lying there taking it? A. Yes, he was pushing on me, there was nothing I could do.

Q. Now Miss Cubbage, while you were in high school you studied physical education, did you not? A. No.

Q. Didn't you have a course in physical education? A. We had a course in health in my ninth grade year.

Q. Your ninth grade year? A. My ninth grade year.

Q. That was at Altoona? A. Yes. We had health, but we didn't have no physical education.

Q. Did you take gym? A. No, we didn't have no facilities to take gym.

Q. How much do you weigh, Miss Cubbage? A. Right now I weigh more. At the time I weighed 125.

Q. You weighed 125 on October 17 last year? A. Yes.

Q. Do you know what Mr. -- your stepfather weighs, or weighed at that time? A. No.

Q. Has your stepfather ever been any larger than he is today, since you have known him? A. He seems larger now than he's been.

Q. He seems larger than he was then? A. That time, yes. When he was married to my mother he seemed like he was thinner.

* * * * *

Q. How you stated before that your mother told you to treat your stepfather as a father. A. When I was small, when we were living with him. I had to respect him as my stepfather when we lived with him.

Q. Has she repeated that request or demand of you? A. No. She had no reason to, I mean, because the only time I saw him was when he would come up to give money or we would do down there to get the money. That's the only time I saw my stepfather so I didn't have any contact with him to even, you know, to do like she said.

Q. Have you ever heard any disagreement between your father and your mother, your stepfather and your mother? A. I know one night he came up there and he would fuss at my mother and carry on and raise a big fuss, it was last summer when I was here, because he came up there and fussed at my mother and everything, and she asked him to get out and everything; he carried on.

4. Q. He carried on? A. Yes. He was drunk.

Q. He was drunk? A. Yes.

Q. What did he do? A. He just cursed and used vulgar language and stuff.

Q. What else did he do? A. That's all he did, just cursed.

Q. Did he hit your mother? A. No, but he hit my mother when we were living together, when we were living as a family I would know him to hit my mother and hurt my mother.

* * * * *

Q. Miss Cabbage, on this date in question, I believe it was October 17, 1961, please tell the jury and this Court how you were dressed on that date, what were you wearing? A. I had a pair of black slacks and black sweater on, and my blue coat.

43 Q. Were you wearing anything else in the way of clothing? A. Yes, I had underclothes on under that.

Q. What underclothes did you have on? A. My underclothes.

Q. What underclothes? A. My bra and my underwear.

Q. Panties? A. Yes.

Q. Were you wearing anything else? A. And my sweater and my slacks and my coat.

Q. Miss Cabbage, have you discussed this case with anybody before today? A. I told my mother, I have talked to my mother.

Q. Have you discussed it with anyone else? A. Yes, I have told Mrs. Brooks and Mrs. Hudson what happened, and everything.

Q. Have you discussed this case with Mr. Blackwell, the District Attorney? A. Yes.

Q. How many times? A. I don't know what you mean.

Q. Have you talked with Mr. Blackwell about this case? A. Yes.

Q. How many times? A. Once.

44 Q. When was that? A. One day we went up to -- one day we were supposed to go to his office.

Q. Do you know how long ago that was? A. No, I don't know what day that was.

Q. Was it before Christmas? A. Yes, I think it was before Christmas.

Q. Now did you ever go to court before you discussed this matter with Mr. Blackwell on the same case? A. Yes, I think so.

Q. Which court did you go to, if you know? A. I don't know.

Q. Was it in this building? A. I don't know. I just know it was a court, they asked questions.

Q. Who asked you questions? A. I don't know who the man was.

Q. Was there a judge present? A. Yes, I believe so. There was two -- first, right after it happened; the next day we went to court.

Q. You went before a judge at that time? A. But it wasn't in here I don't think, because it was other cases being -- you know. And then we went another time.

Q. So you have been in court twice? A. Yes, they called me. The last time they called me, just like this.

* * * * *

45 Q. After you and Mr. Tansimore left his room did you and he walk to his car? A. Yes.

46 Q. About what time was that that you started walking toward his car? A. I don't know. I know it was around -- because when we got there, it was around ten-something; around ten when we got there. I just don't know what time, because he didn't have no clock and I didn't look at no clock.

Q. Do you have any idea how long you stayed in his room? A. No.

Q. It was dark when you left? A. Yes, it was dark when we went.

Q. Did you meet or pass any people in the street as you walked to his car? A. No, I don't remember seeing no one.

Q. Did any cars pass by you while you and he were walking?
A. I guess there was cars, yes, cars passing.

Q. Did Mr. Tansimore have his hands on you as you walked down the street to his car? A. No.

Q. Was he threatening you with anything as you walked down the street? A. No.

Q. Were you crying as you walked down the street? A. I was, yes; I had tears in my eyes but I was trying to hold it back because I was afraid.

47 Q. Afraid of what? A. Afraid maybe he might hit -- you know, think that I would tell, because I was crying.

Q. He hit you before? A. No, he never hit me, but he's hit my mother.

Q. He has hit your mother? A. Yes, he has.

Q. You saw him hit your mother? A. Yes.

Q. How many times? A. He's beat my mother before when she was married to him.

Q. Beat her with a stick? A. No, with his fists.

Q. How many times? A. I don't know how many times.

Q. I mean, how many times did he beat her? A. I just don't know. Whenever he would come in drunk or something, he would fight her.

Q. He would fight her or he would beat her? A. He would beat her.

Q. Did she ever hit him back? A. No, there was nothing she could do.

Q. This went on over a period of years? A. Yes, in the time of their marriage, when I was staying with them. I don't know what happened
48 after I left, but I just know --

Q. Is there something you wanted to say? A. I say, I just know when I was living with them how he beat her.

Q. Do you know why he beat her? A. No, I don't.

Q. Was there an argument before the beating? A. Sometimes he would come in drunk and he would be nasty.

Q. Did she ever say anything to him for being drunk, your mother, that is? A. I don't know what she would say to him.

Q. Would she say anything? A. I don't know, because I don't remember that.

Q. You only remember that he beat her? A. Yes, I do.

Q. Did she ever have him arrested for beating her? A. Yes.

Q. She did? A. Yes.

Q. Was he ever put in jail for beating her? A. I don't know about that. I know she went to do something about it a couple times.

49 Q. Was there a light on in Mr. Tansimore's room while you and he were there? A. There was a little red light there at the window. He has a red light. And there was a light on the bed.

Q. Did you testify heretofore that he pulled the light -- A. He pulled the light that was on the bed, the bed light, off.

Q. You mean he turned it out? A. Yes.

Q. But the other light remained on? A. Yes, I believe so.

Q. Did you and he have any discussion about the lights in his room? A. No.

Q. He didn't say anything to you about a shortage in the lights going out or the fuse going out? A. No.

Q. Was there any whiskey in his room when you were there?
A. Yes.

Q. What kind of whiskey was it? A. I don't know.

Q. Was it brown whiskey or clear whiskey? A. Brown whiskey.

Q. In a bottle? A. Yes. He had lots of it there.

50 Q. He had lots of whiskey? A. Yes.

Q. By "lots," what do you mean? A. He had two or three bottles of whiskey. He had glasses on the table there.

Q. The bottles were on the table? A. Yes.

Q. Did he drink any of the whiskey while you were there? A. Yes.

Q. How much? A. He tried to make me drink some.

Q. Did you drink any? A. I took two sips and I didn't want no more. He said, "Drink it."

Q. Had you ever tasted whiskey before? A. No.

Q. Have you ever tasted beer? A. Yes.

Q. Had you ever tasted wine? A. No.

Q. Do you have a boyfriend? A. Yes.

Q. How long have you had one? A. Since this summer. The girl and I next door date brothers.

51

Q. Two brothers? A. Yes.

Q. What is the fellow's name who is your boyfriend? A. Jimmy Gaither.

Q. What is it? A. Jimmy Gaither.

Q. Spell the last name. A. G-a-i-t-h-e-r.

Q. How old is Jimmy? A. He's 22, I think.

Q. Do you know where he lives? A. He lives in Southeast.

Q. Do you know the street address? A. No.

Q. Do you know his phone number? A. No.

Q. How do you get in touch with him when you want to see him?
A. He comes sometimes -- he only comes on the weekends because he works in the evenings.

Q. Where does he work? A. In the Labor Department.

Q. At night? A. Yes.

52

Q. What does he do there, do you know? A. He works on some kind of printing machines, some kind of machines, something like that he does.

Q. Does he have a car? A. No.

Q. What is the girl you referred to next door, what is her name?
A. Veronica Hamilton.

Q. Veronica Hamilton? A. Yes.

Q. By "next door," you mean next door to where you formerly lived? A. Yes.

Q. How old is Veronica? A. She's 19.

Q. Does she go to school? A. No, she's out of school. She goes to night school in the evening.

Q. Would her address be 1304 R Street? A. Yes.

Q. Immediately next door? A. Yes.

Q. What floor does she live on? A. She have the whole house.

Q. The whole house. What is the fellow's name with whom she keeps company? A. Harry Jacobs.

53

Q. Harry Jacobs? A. Yes.

Q. Did you not say that you and she kept company with two brothers? A. Yes, we dated together on weekends.

Q. Are Jacobs and Gaither brothers? A. They're half-brothers, yes.

Q. Where does Harry live? A. In Northeast, I think.

Q. You don't know the address? A. No.

Q. Does he have a car? A. No.

Q. When you dated, what would you do on dates, you and this girl?

MR. BLACKWELL: I object, if Your Honor please. I think this is going far afield; it is too indefinite.

THE COURT: The question is too general, I think.

BY MR. DAVID:

Q. On the last time that you had a date with Jimmy Gaither, where did you and Jimmy go? A. We went to the movies with Veronica.

Q. Which movies? A. The last time we went to a friend of Veronica's; we went to a party; and before that we went to the movies.

54 Q. What kind of a party was it? A. It was -- just played records and danced.

Q. Were there several persons present? A. Yes.

* * * * *

Q. Would you give us the approximate date, please, for the benefit of the prosecutor?

THE COURT: "For the benefit of the prosecutor" may be stricken. Don't make statements like that, counsel. I said just ask the question. When I said that, I meant it.

THE WITNESS: It was around New Year's, after New Year's.

55 BY MR. DAVID:

Q. After New Year's of sixty -- A. '62, this year.

Q. Approximately how many people were at the party? A. There was a whole lot of people, all good friends.

Q. How long did the party last? A. Until around eleven or twelve, somewhere around that time.

Q. What did you do after that? A. We went home. We went home in a cab and he let me out and I went home and Veronica -- we went home.

Q. Had you been to any parties before that with Jimmy ?

A. Yes. We sometimes go over the house and play records.

Q. Whose house? A. Barbara's.

Q. Who is Barbara? A. That is one of the friends Veronica worked with.

Q. What is Barbara's last name? A. I don't know her last name.

Q. Do you know where she lives? A. No.

Q. But you have been to her house? A. Yes.

Q. Now, does Jimmy drink whiskey? A. I don't know what he drinks.

Q. Have you ever seen him drink whiskey? A. I have seen him take a couple tastes sometimes, but I don't know what he drinks.

Q. Have you ever seen him drink any beer? A. No.

Q. Have you ever seen him drink any wine? A. No.

Q. After you arrived near your home, I believe you said there was a woman out front who was a friend of yours, is that right, Mrs. Brooks?
A. Yes.

Q. And Mrs. Hudson was in the house; is that correct? A. Yes.

Q. And which one of the ladies told you to call your mother?

A. They both agreed; Janice said we better call.

Q. Which one is Janice? A. The younger one.

Q. What is Janice's last name? A. Hudson.

Q. Mrs. Janice Hudson? A. Yes.

Q. She is the one that told you to call your mother, and the other lady agreed; is that right? A. I imagine -- I mean, I didn't stop to find who said what. She said call her mother, and right away. We just went on up and called her.

Q. Did you call or did they call? A. I talked to my mother.

Q. Did you make the call? A. No, she dialed the number; she had my mother's number.

Q. Did your mother come home? A. Yes.

Q. What did your mother do after she got home? A. She came down to D.C. General Hospital.

Q. You had already arrived at D.C. General? A. Yes.

Q. What did they do for you at D.C. General? A. They examined me.

Q. The doctor examined you? A. Yes.

Q. Did he tell you anything about what he found? A. No, he didn't say anything to me.

Q. Did he give you any treatment? A. No.

Q. What did they do after he finished examining you? A. The lady, the police lady, the lady that took me there, took me on home.

Q. You didn't stay in the hospital? A. No.

58 Q. You didn't stay in the hospital any appreciable length of time?
A. No, the police took me there, and they took me in and examined me, and the lady took me, the lady that was with me, that they called to go with me, took me on home, my mother and I.

Q. Were you in any pain at that time? A. I was sore, yes.

Q. Sore in your private area? A. Yes.

Q. Any place else? A. No.

Q. Now I believe you stated to the District Attorney on direct examination that you are now pregnant; is that so? A. I said I am pregnant.

Q. You are pregnant? A. Yes.

Q. Do you know how many months pregnant you are? A. Five; it will be six come the middle of March.

Q. Who told you you were pregnant? A. The doctor told me.

Q. Which doctor? A. The doctor down at the hospital, told my mother.

59 Q. When did he tell your mother that? A. Last month. They couldn't find out -- I went down there before and they couldn't find out. Then after a couple months they couldn't tell. But then the fourth month they could tell and they said I was. That was about a month or two ago when they found out. It was January.

Q. In January he told your mother that you were pregnant; he didn't tell you? A. Yes, he said she's four months pregnant.

Q. He said that in front of you? A. Yes.

Q. Do you know his name? A. No.

Q. Have you been to a private doctor for an examination since this October 17th? A. Right after it happened my mother took me to be examined to see if I was pregnant, because my period hadn't come on since October 17th. My period was supposed to come on the next week and it didn't come on. She took me to the doctor's.

Q. Which doctor did she take you to? A. I don't know the name of the doctor.

Q. A private doctor? A. Yes. And he said he didn't know. He said wait a while and see. He said he couldn't tell yet.

60 Q. Will you tell the Court, please, and the jury, why you did not scream as you walked out of the house where Mr. Tansimore has a room? A. Because I was too scared and nervous. It just was a shock to me. I didn't know what to do, what to think, or anything.

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REDIRECT EXAMINATION

BY MR. BLACKWELL:

Q. Audrey, you testified on cross examination that your mother took you to the doctor after this assault, about a week after this assault because your period did not come on when it was supposed to come on. Did your period come on in September of last year? A. Yes.

Q. Thank you. Now, defense counsel questioned you about your wearing apparel on the night in question. At this this time I would like to request that this be marked as Government's Exhibit No. 1 for identification, please. The contents in this bag.

(Thereupon, contents and bag were marked Government Exhibit No. 1, for identification.)

61 MR. DAVID: If it please the Court, could counsel for the defendant see the exhibit?

MR. BLACKWELL: I have no objection to his seeing it, Your Honor.

* * * * *

BY MR. BLACKWELL:

Q. Audrey, I now show you what has been marked as Government's Exhibit No. 1, for identification, and ask you to look inside the bag at the contents, and tell us whether you have seen that article before.

A. It is my underwear I had on that night.

Q. By "that night" are you referring to October 17th? A. Yes.

Q. And you had them on the night when the defendant raped you?

A. Yes.

Q. Now did there come a time when you turned that over to a member of the Sex Squad by the name of Detective Chase? A. Yes. He told me to take them off and bring them in, to give them to him.

Q. When did you give them to him? A. The next day. He said
62 was these the pants I had on?

Q. Don't tell us what he said. But you did turn them over to Detective Chase? A. Yes.

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63

CORNELIUS G. McWRIGHT

was called as a witness on behalf of the Government, was duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. Will you state your full name, please, sir? A. Cornelius G. McWright.

Q. And what is your address, sir? A. North Springfield, Virginia.

Q. And your occupation, please? A. I am a Special Agent of the Federal Bureau of Investigation presently assigned to the FBI Laboratory.

Q. What is the nature of your work, sir? A. I conduct examinations of blood and other body fluid in criminal type cases.

Q. Will you tell His Honor and these ladies and gentlemen concerning your educational background and qualifications? A. I have a Bachelor of Arts degree from Evansville College in the field of biology and the related field of chemistry. I have done graduate work in

physiology at Indiana University. I have done graduate work in bio-chemistry and micro-biology at George Washington University. I have
 64 also received a period of specialized training in my particular field of endeavor at the FBI Laboratory.

Q. How long have you been employed in the FBI Laboratory, sir?

A. Approximately five-and-a-half years.

Q. And have you had occasion to testify as a witness, as an expert witness concerning body fluids and stains in Federal Courts in this country? A. Yes, sir, I have testified in both State and Federal Courts many times.

MR. BLACKWELL: If Your Honor please, I submit this witness is qualified to testify as an expert on blood stains in this court, Your Honor.

THE COURT: All right. You may proceed.

MR. BLACKWELL: Thank you, Your Honor.

BY MR. BLACKWELL:

Q. Mr. McWright, I show you what has been marked as Government's Exhibit No. 1 for identification, that is, the contents of that bag, and I ask you, sir, if you have seen that before? A. Yes, sir. I examined this item at the FBI Laboratory.

Q. What was the purpose of your examining that, sir? A. I examined it for the presence of blood and for the presence of semen. Semen is the male reproductive fluid.

65 Q. Now will you tell us what your examination disclosed? A. I found a small human blood stain, too limited for group determination, in the crotch of this pair of panties. However, I found no semen.

Q. Now, who brought that exhibit to you, sir? A. A detective Chase, of the Metropolitan Police Department.

Q. And when you completed your examination, what did you do with that exhibit, sir? A. It was subsequently returned to Detective Chase.

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CROSS EXAMINATION

BY MR. DAVID:

Q. Mr. McWright, is your name spelled M-c-W-r-i-g-h-t?

A. M-c, Capital W-r-i-g-h-t.

Q. Thank you. Have you ever testified in rape cases before in your capacity as FBI Laboratory man? A. Yes, sir; I have.

Q. Have you ever found in underclothing traces or indication of semen in other cases? A. Yes, sir, in some cases one will find semen.

Q. From your experience in the work in which you have engaged, is there any way that a scientist can identify semen, as to whose it is?

66

A. No, sir.

Q. You testified that there was a blood stain on those panties?

A. Yes, sir.

Q. I believe you also testified that it was too small to do what with? A. To determine the particular blood group.

Q. In other words, you couldn't determine whose blood it was?

A. That is correct, sir. I wish to elaborate on that. Blood group -- even though -- when it is determinable, one is not able to specifically state that it originated from a particular person, only to a particular group of people.

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67

FRANCES B. BROOKS

was called as a witness on behalf of the Government, was duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. Will you state your full name, please? A. Mrs. Frances B. Brooks.

Q. Mrs. Brooks, where do you live? A. 1304 R Street, Northwest.

Q. Directing your attention to October 17th, were you living at the same address? A. Yes.

Q. Do you know a young lady by the name of Audrey R. Cubbage?

A. Yes, I do.

Q. And did she live at the same address as you, or next door to where you live? A. Next door.

Q. That was on October 17th she was living next door to you?

A. Yes.

68 Q. Now did there come a time, sometime in the evening, after 10:00 o'clock p.m., on October 17th, that you had occasion to see Audrey? A. Yes, I did.

Q. Will you tell His Honor and the ladies and gentlemen of the jury the circumstances under which you saw her, please? A. Well, when I first saw Audrey she was coming up the street from towards 13th Street, and she started up the sidewalk of the building where she lived which was right next to my house. And she looked upset so when she stopped to speak I asked her what was wrong and she started crying and she told me that she had been attacked by her stepfather. And I asked her who she meant to be sure that I understood what she was talking about, and she said her stepfather, Thaddeus, had attacked her, and I asked her where was she, and she told me she was at his room.

She went on to explain what had happened to her. And her mother wasn't there at the time so I suggested that she should contact her mother or call the police. And I called my godsister who lives in the same house with me, and we told her what happened.

Q. Who is this godsister of yours? A. Janice Hudson.

Q. I see. Did she come? A. Yes, she did.

Q. And did Audrey repeat what she told you to Mrs. Hudson?

69 A. Yes, she did.

Q. How soon did Mrs. Hudson come after she talked to you?

A. Yes, she did.

Q. I said, how soon, madam. A. Five or six minutes.

Q. As a result of the conversation you and Mrs. Hudson had with Miss Audrey, what did you do? A. Miss Hudson escorted Audrey up the street to the telephone to call her mother, to tell her what happened.

Q. Describe more in detail please, for His Honor and the ladies and gentlemen of the jury what you mean by Audrey seemed to be upset at the time you saw her coming from 13th Street. A. At the time Audrey looked -- she was very pale and she looked frightened as though something had scared her out of her wits. When she spoke to me she did it in such a funny manner, it didn't seem like her at all. That's why I asked her if there was anything wrong. When I asked her if anything was wrong, she started crying.

Q. How long after you asked her did she tell you? A. Just a few minutes -- just a few seconds, rather. Didn't go that long. When she started crying I asked her what was wrong, I said stop crying, and she told me what happened.

Q. By the way, do you know the defendant in this case, Thaddeus Tansimore? A. I don't know him personally; I do know him from sight.

I had seen him before several times.

Q. And did you report to the police, shortly after the police officers came, what you saw as far as Audrey was concerned? A. Yes.

* * * * *

MR. BLACKWELL: Your witness, Mr. David.

MR. DAVID: No questions.

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JANICE M. HUDSON

was called as a witness on behalf of the Government, was duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. State your full name please, madam. A. Janice M. Hudson.

Q. Where do you live Miss Hudson? A. 1304 R Street, Northwest.

Q. 1304 R Street, Northwest? A. Yes; Northwest.

71

Q. Directing your attention to October 27, were you living at the same address? A. Yes.

Q. Did you know one, at that time, by the name of Audrey R. Cubbage? A. Yes.

Q. And did you see her on the night of October 17th, sometime between 10:00 and 10:30? A. Yes, I did.

Q. Now will you tell His Honor and the ladies and gentlemen of the jury the circumstances under which you came to see her, please?

A. Well, I was upstairs looking at television and I was called down to the front.

Q. Who called you? A. By Mrs. Brooks. And when I got to the front Audrey was standing on the front and she in return asked me -- Frances asked me, Mrs. Brooks, to listen to what Audrey had to say.

Q. And what did Audrey say? A. Audrey told me that her stepfather, Thaddeus, had raped her.

Q. Did she tell you how soon before that? A. She said it was about an hour ago.

Q. And what did you do after she told you that? A. Well, I walked to the corner with her to call her mother.

72

Q. And did you call her mother? Did she call her mother?
A. I dialed the phone for her and talked to her mother, first, and I turned the phone over to Audrey.

Q. Do you know whether or not there came a time when the police officers came? A. Well, after that her mother was at work and she asked me would I call the police, and I did.

Q. You called the police; is that right? A. Yes, I did.

Q. And did the police officers come? A. Yes, they did.

Q. Did you give them a statement and tell them what the complaining witness, Audrey, had told you? A. Yes, I did.

Q. Well, did she go into any detail as to what happened concerning this attack, to you? A. Well, on the way to the telephone booth, she told me that her stepfather Thaddeus had raped her, and how he performed indecent acts upon her.

Q. How he did what? A. Performed indecent acts upon her.

Q. Very well. Thank you.

MR. BLACKWELL: Your witness, Mr. David.

73

CROSS EXAMINATION

BY MR. DAVID:

Q. Miss Hudson, do you know Audrey's mother? A. Yes, I do.

Q. How well do you know her? A. Only as a neighbor.

Q. How long have you known her as a neighbor? A. Since last May.

Q. May? A. Yes.

Q. Has Mrs. Tansimore ever talked to you about Audrey and her husband? A. No, she hasn't.

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74

DR. JOHN E. PERRY

was called as a witness on behalf of the Government, was duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. State your full name please, Doctor. A. Doctor John Edward Perry.

Q. And are you a member of the Staff of D.C. General Hospital?
A. Yes, I am.

Q. Directing your attention to October 17, or October 18, of last year, were you a member of said staff? A. Yes, I was.

Q. And did there come a time when, in your capacity as a doctor, physician on the staff of D.C. General Hospital, that you examined one Audrey R. Cubbage? A. That's right.

Q. And for what did you examine her, sir? Under what circumstances, I will ask you, did you examine her? A. I examined her for an alleged rape.

Q. And where did this examination take place? A. This examination took place in the admitting office of D.C. General Hospital.

75

Q. And who brought her there, do you know? A. The Woman's Bureau of the District of Columbia Police Department.

Q. Very well. And I believe you testified you did perform the examination; is that right? A. That's right.

Q. Now what did your examination disclose, Doctor? A. My findings were, a well developed, well nourished, 17-year old female in no acute distress, alert, oriented to person, time and place. She presented scratch-like abrasions on the anterior and posterior surfaces of her neck. Scratch-like abrasions were evident on her left shoulder. The rest of the examination was within normal limits except for genitalological findings which were the following: The hymen was noted to be perforated. A greenish whitish secretion was noted in the vagina. First degree tear was noted on the vaginal floor and also on the left vaginal vault.

Q. What do you mean by first degree tear, Doctor? A. A first degree tear involves the mucosa of the vagina, that is, the very first tissue layer.

Q. The very first tissue? A. Right.

Q. Well now, does that indicate anything further? A. That indicates probably trauma.

Q. Well, would that have any bearing on whether or not this was the first time this person had sexual relations? A. No, it wouldn't; no.

76

Q. Well, would it indicate whether or not this person frequently had sexual relations? A. No, it wouldn't.

Q. It would not indicate that? A. No.

Q. Would it indicate that she had not had frequent sexual relations? A. No, it wouldn't.

Q. It would not indicate that either? A. No.

Q. And you say it might indicate trauma? A. Right.

Q. Now what about this green substance you testified to? A. It was really a whitish secretion that had a greenish tinge. I estimated the volume to be, oh, five to six cc's. It was not purulent. It wasn't indicative of infection; it didn't have a foul odor which is indicative of infection. It was compatible with sperm, with semen.

Q. It was compatible with semen? A. Yes.

Q. Well now, do you know whether or not a test was made for sperm? A. Yes, a test was made for sperm.

77 Q. Do you know who made that test? A. The laboratory of Doctor Weiss, who is the D.C. General Pathologist, made that test for sperm.

Q. I see. A. And the report was intact sperm were observed in the secretions that I took the swab of from the vagina.

Q. The report was what? A. Intact sperm.

THE COURT: Could you tell, Doctor, from your examination, whether the first degree tear was of recent origin or not?

THE WITNESS: Yes, it was of recent origin.

MR. BLACKWELL: Thank you, Doctor.

You may examine, Mr. David.

CROSS EXAMINATION

BY MR. DAVID:

Q. Doctor, could you possibly account for the greenish tinge of this whitish substance? A. I cannot account for it. I thought possibly she might have taken a douche, but she denied having taken a douche.

Q. Doctor, is there any way known to science to determine whose semen might be present in a given case? A. With blood typing and the like.

Q. In a rudimentary fashion? A. Right. Well, in some cases it is possible to type a person's semen. That is, the same substances that
78 are responsible for blood type will be found in the semen. That is, if a person is typed A, you might find the same substance in his semen. The semen might come out type A.

Q. Was any test run of this semen which is alleged to have been found, to determine what type it was? A. Not to my knowledge, no.

Q. Doctor, would you describe, if it were present, the motility of the sperm in the semen that was found? A. No examination for motility was described in this examination. I myself did not perform the

examination of the sperm. Examination was performed by the laboratory of Doctor Weiss.

Q. Does Doctor Weiss' report indicate anything as to motility of the sperm? A. No, I see no information on motility.

Q. Well, Doctor, in order for sperm to fertilize an egg, sperm must possess motility; is that true? A. That's true.

Q. Doctor, have you seen the subject under discussion, Audrey Cubbage, since October 17th? A. I think I saw her when I went around the corner to get a drink of water.

Q. No, I mean in a professional way. A. No, I have not.

79 Q. You have not examined Audrey Cubbage since October 17th?
A. No, I have not.

Q. Looking toward ascertaining whether or not she might be with child? A. No, I have not.

Q. Do your records reflect whether anyone at D.C. General Hospital might have conducted such an examination? A. No. My information doesn't list any such examination.

Q. Do you have the complete D.C. General Hospital record on Audrey Cubbage? A. What I have is the record of my examination at the time she was brought to the admitting office, and the report on the secretion that I removed from her vagina.

Q. You have no report of any examination or treatment subsequent to that time? A. No, I do not.

Q. Do you know whether or not there is any other person from your institution here prepared to testify in regard to this case, to give additional testimony? A. In what respect? In respect to the subsequent examination?

Q. Yes. A. Doctor Weiss possibly might be able to give some information.

* * * * *

81

DR. DANIEL L. WEISS

was called as a witness on behalf of the Government, was duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. State your full name, Doctor, please. A. Daniel L. Weiss.

Q. And Doctor Weiss, are you a member of the D.C. General Hospital Staff? A. I am.

Q. And I believe you were a member of that Staff on October 17 and 18 of last year, were you not? A. Yes, I was.

Q. In what capacity, may I inquire, please? A. Director of Laboratories and Chief Pathologist.

Q. And what do your duties consist of, sir? A. My duties consist of running the laboratories; observing all the abnormalities which may grow out of the service.

82

Q. Did there come a time, Doctor, sometime on October the 18th of last year, that you had occasion to examine some slides for the purpose of ascertaining whether or not there was semen, sperm rather, on the secretion that had been taken by Doctor Perry, from one Audrey Cubbage? A. I have examined a specimen, but the specimen name which I have is Audrey Bolyar.

Q. Very well. Audrey Bolyar. A. Yes.

Q. And when did you make that examination, Doctor? A. The examination -- well, the material was received by the Laboratory on October 18th, and it was examined that day.

Q. And what was the purpose of the examination? A. We were requested to examine the smears which were presented to us to see if sperm were present.

Q. And what did your examination disclose, Doctor? A. In the smear which was identified as taken from the urethra, there were no sperm. In the smear identified as taken from the cervix in the vaginal tract, there were intact sperm.

Q. Well now, will you explain to His Honor and these ladies and gentlemen of the jury in layman's language just what you mean by those two different areas, please? A. The urethral area is the end of the urinary tract. The cervical vaginal area, of course, is the end of the genital tract, reproductive system. The sperm which we attempt to identify in these examinations is the male sex cell.

83

Q. And I understand that you did find this male sex cell in the vagina did you say? A. That's right.

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Q. Is there any way of your telling, Doctor, approximately how long that sperm had been there? A. No, sir.

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CROSS EXAMINATION

BY MR. DAVID:

Q. What is the life of sperm, Doctor? A. In what environment?

Q. In the urethra. A. Under the conditions that we examine it, we can identify intact sperm approximately up to three days after intercourse.

Q. Doctor, did you examine the sperm for motility? A. No, sir.

Q. Doctor, would you tell us whether or not it is necessary before a sperm can fertilize an ovary for that sperm to possess motility? A. Yes.

84

Q. Can you tell the Court and jury, please, why you did not look for motility in the sperm? A. The conditions of the examination don't permit it. These are smears taken and dried at the time of taking them, then delivered to the laboratory in the ordinary course of business, by which time it is not possible to examine these for motility.

Q. Doctor, is it possible to identify semen in sperm as belonging to a certain individual or type of person? A. No, it isn't.

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REDIRECT EXAMINATION

BY MR. BLACKWELL:

Q. I understood you to testify it could be identified as a male cell, did you not, Doctor? A. Yes.

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85

CHARLES K. MARLAK

was called as a witness on behalf of the Government, was duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. State your full name please, sir? A. Private Charles K. Marlak.

Q. And you are a member of the Metropolitan Police Department, are you not? A. Yes, sir.

Q. You are assigned to No. 2 Police Precinct, are you not?
A. Yes, sir.

Q. And you were so assigned on October 17 of last year, I believe?
A. Yes, sir.

Q. Now, directing your attention, Officer Marlak, to October 17th of last year, did there come a time when you received a call to respond to 1302 R Street, Northwest? A. Yes, there did, sir.

86

Q. And when did you receive that call, approximately?
A. Approximately 10:30 or so, sir.

Q. And did you respond? A. Yes, we did, sir.

Q. And who was with you? A. Officer O'Brien of No. 2 Precinct.

Q. And what did you do and observe upon your arrival at 1302 R Street, Northwest? A. Approximately about 10:30, when we arrived on the scene, 1302 R Street, we met a young lady at that address.

Q. And do you recall her name, sir? A. Yes, I do, sir.

Q. What was it? A. The young lady was Audrey Bolyar or Tansimore, I don't know which one she goes by first. I do know her though.

Q. I see. And do you know whether or not she goes by the name of Cubbage? A. I understand that she does, sir.

Q. And did you have a conversation with her? A. Yes, I did, sir.

Q. As a result of a conversation you had with her, what did you do, if anything? A. Well, sir, we had asked her what happened.

87 THE COURT: He asked what did you do as a result of the conversation, Officer.

THE WITNESS: We went to the address in the 1600 block of 15th Street, sir.

BY MR. BLACKWELL:

Q. How did you get that address? A. From Miss Cubbage, sir.

Q. And do you recall that address? A. Yes, sir, I do.

Q. Do you recall whether it was 1624 - 15th Street, or not?

A. Yes, sir, that sounds like it.

Q. Northwest? A. Yes, sir.

Q. Here in the District of Columbia? A. Yes, sir.

Q. Now why did you go to that address? A. It was my understanding from speaking with the young lady that she had been assaulted at that address.

Q. And when you went there were you looking for a particular person? A. Yes, sir.

Q. Who were you looking for? A. Her stepfather, Thaddeus E. Tansimore.

Q. All right. Now, what did you do upon arrival at the address 1624 - 15th Street, Northwest, here in the District of Columbia?

88 A. I went to the address so named and we knocked on the door to see if anybody was home. At that time there was not and we looked inside. Seeing no one there, we went back outside.

Q. Where did you go, to the first floor, basement, or what?

A. In the basement. It is the basement.

Q. And you say you didn't observe anyone? A. No, sir.

Q. Then what did you do? A. Went back outside where Miss Cubbage was and put her back into the back of the scout car. We waited for a few minutes, sir.

Q. Did you have Miss Cubbage with you at that time? A. Yes, sir, we did.

Q. Did she point the house out to you? A. Yes, sir.

Q. Thank you. Proceed and tell us what happened afterwards please. A. At this point Miss Cubbage got back into the back of the scout car and we waited for a few minutes. At that time Mr. Tansimore arrived on the scene in front of 1624.

Q. How did he arrive? A. He drove on up there in his car.

Q. Was anyone with him? A. Yes, sir; there was a woman with him.

Q. What did he do when he drove up? A. He sat there. We approached the car, asked him who he was, and asked him to get out of the car. We placed him under arrest.

Q. Tell us everything that happened, officer. A. At this point Mr. Tansimore got out of the car and was being very beligerent and yelling and screaming he hadn't done anything.

Q. He did that as soon as he got out of the car? A. Yes, sir.

Q. Had you told him anything? A. No, sir, hadn't said a word to him yet.

Q. You had not said a word to him? A. Other than --

Q. I mean, you had not told him your purpose in being there?
A. No, sir.

Q. What did he do? A. He got out of the car very beligerent and claimed he hadn't done anything.

Q. Very well. Proceed, sir. A. At that point I asked him a few questions along with the other officer, and he claimed that he wasn't anywhere around there. Then we asked him a few more questions and

confronted him with the young lady that was across the street in the scout car. At this time he claimed she had been there and he had

taken her back, had given her a ride, but hadn't done anything. Then he proceeded to be very nasty and belligerent again, he wouldn't say anything.

Q. What did you do then, officer? A. Well, I had hold of the man. I had the other officer put in a call for the cruiser from No. 3, or the Sex Squad cruiser from Headquarters. At this time, about three or four minutes after that, the cruiser from No. 3 arrived and a wagon to transport Mr. Tansimore to No. 3.

Q. And after you put in a call for the Sex Squad and the wagon had responded to this address, did you do anything further as far as this case is concerned? A. Yes, sir, I sat there -- we stood there, out on the street, you know, asking different questions about what happened and so forth. At one point Mr. Tansimore was very despondent, he hung his head and said he wanted to be shot. He wanted me to let him go so I could shoot him. I told him I couldn't let him go and shoot him at this time. I said it wasn't right. He attracted a big crowd of people at this time. He was telling me he was so and so, he was an Indian.

Q. He said he was what? A. Some sort of an Indian. I just held on to him until the wagon came and put him in the wagon. He was very nasty.

91 Q. Did that terminate your connection with this case as far as the investigation was concerned, sir? A. Yes, sir; it did.

Q. Thank you very much, officer.

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AFTERNOON SESSION

97 CHARLES K. MARLAK

resumed the witness stand and testified further as follows:

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CROSS EXAMINATION

BY MR. DAVID:

Q. Officer, will you please tell me how you spell and pronounce your last name? A. Marlak, M-a-r-l-a-k.

Q. Thank you.

Officer, how much time would you estimate you spent with the complaining witness and the defendant after you arrived in her home at 1302 R Street, Northwest? A. Well, sir, I'd say I spent a good hour with her.

Q. With her? A. Yes, sir.

Q. How much time would you estimate you spent with the defendant?

98

A. A half-hour, sir.

Q. Now, when you first observed the defendant, where was he and what was he doing? A. He had pulled up in front of 1624 - 15th Street, in his car.

Q. What kind of car was he driving? A. I think it's a 1951 Willy's, but I'm not positive on it.

Q. Officer, did you testify heretofore that the defendant was accompanied by someone at the time he drove up in his car? A. Yes, sir.

Q. With whom or by whom was he accompanied? A. A woman. I do not know who, sir.

Q. You did not ask the woman's name? A. Sir, approximately at this time the defendant was asked to get out of his car, this woman seemed to disappear. We were having a time with the defendant at this time and I really didn't pay no attention to that woman.

Q. Did you ever attempt to ascertain subsequently who the woman was? A. No, sir.

Q. You said not one word to her? A. I remember she was standing around there, she was asking if she could do something. We told her to sit down in the car; we were having trouble with the defendant. I don't remember asking her name or anything.

99

Q. How long had you been in the company or had you had the defendant in your company or surveillance before you told him what the matter was all about? A. I'd say approximately five or ten minutes after he stopped making noise and jumping up and down.

Q. And what did you tell him then? A. I'm not quite sure exactly what I told him. It's been a time since then. I do remember explaining a few things to him, telling him why I had placed him under arrest.

Q. You told him why? A. Yes, sir.

Q. What did you tell him as to why? A. I told him, I believe I told him -- I don't know the exact words, but I told him he was accused of assault at that time.

Q. And what did he say in reply to that statement by you? A. As I recollect, sir, he was very beligerent and nasty, didn't quite make too much sense; he denied everything at one time.

Q. He did deny the statement that you made that he was charged with assault? A. Yes, sir.

Q. What was the other thing you said to him? A. I beg pardon?

100 Q. You said you said two things to him that you remember. That was one. What was the other? A. The other time he admitted being there; then he didn't.

Q. He admitted being where? A. At the scene.

Q. In his room? A. No, sir; he admitted driving the girl home, as far as I remember.

Q. Then subsequently he denied it? A. Yes, sir.

Q. Do you have any written notes on this matter? A. Yes, sir.

Q. Would it help your recollection to refer to those notes any?

A. No, sir.

Q. Did you go into his room? A. I looked inside, I had been able to get inside and look. I was able to see inside the room.

Q. I take it by your answer you did not enter the room?

A. No, sir.

Q. Do you know whether or not your partner entered the room?

A. Yes, sir.

Q. Did he enter the room? A. No, sir. I know he did not.

101

Q. Do you know whether any members of the Metropolitan Police Department went into that room? A. I do not know, sir.

Q. After you had arrested the defendant, where did you take him? A. I took him across the street to the scout car which was parked on the east side of 15th Street. After about five minutes I walked him over there where we placed a call for the wagon, sex cruiser and cruiser in No. 3. We stood over there until they arrived.

Q. Then? A. They placed him in the wagon and that's the last I saw of the man.

Q. You saw him no more until today? A. Yes, sir.

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102

CHARLES B. CHASE

was called as a witness on behalf of the Government, was duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. State your full name and assignment please, officer.

A. Charles B. Chase, Jr. I am a detective assigned to the Detective Bureau of the Metropolitan Police Department, working out of the Sex Squad.

Q. And directing your attention, Detective Chase, to October the 17th and 18th, were you so assigned to the Sex Squad as a member of the Metropolitan Police Department? A. Yes, sir.

Q. I show you what has been marked as Government's Exhibit No. 1, for identification, the contents of this bag, and ask you if you have seen that article before. A. Yes, I have.

Q. And when did you see it? A. On the morning of October 18th.

Q. And where did you see it? A. In the office of the Sex Squad.

Q. Did there come a time when you came in possession of it?

A. Yes, sir.

Q. Who turned it over to you? A. Miss Audrey Bolyar.

103 Q. And what did you do with that exhibit after you received it, sir?
A. On the 19th of October I took it to the Federal Bureau of Investigation and turned it over to Agent Cornelius McWright. I also had a letter requesting a bio-chemical analysis for the presence of semen and blood.

Q. Did there come a time when you returned to the Federal Bureau of Investigation's Laboratory and received that exhibit?

A. Yes, sir.

Q. And when did you do that, sir? A. That was on November 30, 1961.

Q. After you received it from the Federal Bureau of Investigation, what did you do with it, sir? A. Turned it into the Property Clerk's office of the Metropolitan Police Department.

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CROSS EXAMINATION

BY MR. DAVID:

Q. Officer Chase, at the time that you regained possession of that article of clothing, did you also get a report from the FBI?

A. Yes, sir; one was mailed at a later date to us.

104 Q. Did you see it? A. I have it here.

Q. Insofar as the report goes, what does the report show as to semen?

* * * * *

THE WITNESS: As to semen?

BY MR. DAVID:

Q. Yes, sir. A. Negative.

Q. Thank you.

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REDIRECT EXAMINATION

BY MR. BLACKWELL:

Q. What did the report say as to blood? A. There was presence of blood, but there wasn't enough grouping.

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105 WILLIAM R. HOLDEN

was called as a witness on behalf of the Government, was duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. State your full name please, sir. A. Detective William R. Holden.

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Q. You are a member of the Metropolitan Police Department assigned to the Sex Squad, are you not? A. I am, sir.

Q. And I believe you were so assigned on October 17 and 18 of last year, were you not? A. I was, sir.

Q. Did there come a time when you had occasion to participate

in an investigation of a rape charge against the defendant Thaddeus Tansimore? A. I did, sir.

106 Q. And what did you do in connection with your investigation, sir?

A. About 12:10 a.m. on the 18th I responded to No. 3 Precinct and received a complaint from Audrey Bolyar, the complainant in this case. As a result of that complaint --

Q. Pardon me. What time was that? A. 12:10 a.m., on the 18th.

Q. Proceed. A. As a result of that complaint I transported Miss Bolyar to the D. C. General Hospital and from there she went -- I mean, I transported her to the Woman's Bureau, and from there she went to D. C. General Hospital. Prior to having transported her, I spoke to Mr. Tansimore in regard to this complaint.

Q. And what did he say, sir? A. Mr. Tansimore denied the offense. He admitted that he had taken the girl over to the house for the purpose of getting some money that she had asked for prior to this. He also said that he brought her back home but he denied the fact that he had raped her. He stated that he didn't have to do anything like that because he spent his money on prostitutes, he said that that's why he didn't have any money, because he spent it on prostitutes and whiskey.

Q. Was that the substance of your conversation with the defendant relative to this charge, Detective Holden? A. Yes, sir. And then,

107 after that, I confronted the complainant and the defendant. She repeated her complaint to him, and he thought for a moment and he said "I have nothing to say. All I can say is that she is an exact duplicate of her mother, she lies better than her mother."

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CROSS EXAMINATION

BY MR. DAVID:

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Q. What time did you first see the complaining witness?

A. That was approximately 12:10 I responded to the Third Precinct.

Q. Would you describe her condition at that time insofar as

how she looked and how she acted? A. Well, while she was relating the story to me, she was crying. She seemed to be nervous at that time. She had some scratches on her neck here (indicating).

Q. Were they very deep scratches? A. They were more or less -- I'd say, abrasions.

Q. Superficial abrasions? A. Yes.

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112

ROBERT M. BOYD

was called as a witness on behalf of the Government, was duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BLACKWELL:

Q. State your full name and assignment Officer, please.

A. Detective Robert M. Boyd, Metropolitan Police Department, Washington, D. C., assigned to the Third Precinct.

Q. And were you so assigned as a member of the Metropolitan Police Department to Precinct No. 3 on the evening of October 17 of last year? A. Yes, I was.

Q. Now did there come a time when you received a call to respond to 1302 R Street, Northwest or to 1624 -15th Street, Northwest?

A. We received a call to respond to the 1600 Block of 15th Street.

Q. Did you so respond? A. Yes.

Q. Upon your arrival there, what did you observe and what did you do? A. Upon arrival I observed a scout car parked abreast, two uniformed
113 officers standing beside it, in company with a man later identified as the defendant, and a young girl, later identified as the complainant, was sitting in the back seat of the scout car. She appeared to be greatly upset and she was crying. The uniformed officers told us --

THE COURT: Never mind what they told you.

BY MR. BLACKWELL:

Q. As a result of your conversation with the uniformed officers, what did you do, if anything? A. We waited until the arrival of the

patrol wagon, and at that time the defendant was placed in the patrol wagon, transported to the Third Precinct. We took the girl from the scout car and put her in the back seat of the cruiser and drove to the Third Precinct.

Q. Did you participate in interrogating the defendant after his arrival at No. 3 Precinct? A. Yes, sir.

Q. Did you have him confront the complaining witness? A. Yes.

Q. Will you tell us what transpired there? A. She related what had happened in front of him, and after she finished he paused for a few minutes and then he said something to the effect that all I can say is she lies like her mother.

Q. Thank you. And did you have any further connection with
114 investigating this case, sir; anything further? A. After the time that he was at the Precinct; no, sir.

Q. Is that substantially all that transpired at the Precinct in your presence? A. Well, I had talked to him before the arrival of the Sex Squad.

Q. All right. What had you said to him and what had he said in reply to you? A. Well, after hearing the story from the complainant as to what happened, we in turn asked him what happened, and he stated that he had taken the girl to -- his daughter, to his room, to give her money, and that while they were there he had given her a drink of whiskey or glass of whiskey, something to that effect, and that after she finished or she sipped the drink and he gave her the money, that he took her to a corner near her home, I believe he said, and let her off there. I think it was on 13th Street.

Q. What was her condition, Detective Boyd, when you saw the complainant in this case, Audrey Cubbage?

MR. DAVID: Objection.

BY MR. BLACKWELL:

Q. Bolyar.

THE COURT: Overruled.

THE WITNESS: She appeared to be upset. She was crying and at first couldn't answer our questions at all.

115

BY MR. BLACKWELL:

Q. Now you say you responded to the 1600 Block of 15th Street, Northwest? A. Yes, sir.

Q. And the defendant admitted, I understood you to say, that he lived in that block? A. I learned later that he did, yes.

Q. Now is that particular block the 1600 Block of 15th Street, Northwest, here in the District of Columbia? A. Yes, sir.

Q. Thank you very much.

MR. BLACKWELL: No further questions of this officer.

CROSS EXAMINATION

BY MR. DAVID:

Q. Officer Boyd, did the defendant ever tell you where his car was parked? A. Yes, at No. 3 Precinct he told us his car was parked up on 15th Street.

Q. Where on 15th Street? A. As I recall, it was the 1600 Block of 15th Street.

Q. I'm sorry, I didn't put my question properly.

Did he ever explain to you where his car was parked while he and the complaining witness went to his room? A. I don't recall him explaining specifically where it was parked.

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Q. Did he ever tell you how far they walked together after they had left his room? A. No.

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(AT THE BENCH:)

MR. DAVID: At this time, if it please the Court, I move for a directed verdict of acquittal for the reason that the Government has not borne the burden and made a prima facie showing that this man committed the crime as charged. They have not proven the elements of the charge of rape or the crime of rape. For those two reasons we ask for directed verdict.

THE COURT: Motion denied.

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117

THADDEUS E. TANSIMORE,

defendant herein, was called as a witness in his own behalf, was duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. DAVID:

Q. Keep your voice up please, so all of us may hear you without any difficulty.

State your full name and your address. A. Thaddeus E. Tansimore, 1624 - 15th Street, Northwest.

Q. Are you related to the complaining witness in this case?

A. No blood relation at all.

Q. Are you any relation at all? A. I am married to her mother, so she would be my step-daughter.

Q. When did you marry her mother? A. June 28, 1947.

Q. Where did you marry her mother? A. In Washington, D. C.

118 Q. At the time you married her mother, did her mother have any children? A. She had this girl who is complaining against me, at that time, but I don't know her exact age.

Q. Prior to your having married Audrey's mother, had Audrey's mother been married before? A. No, she hadn't.

Q. After you and Audrey's mother got married, where did you live? A. First place I lived was 2122 M Street, Northwest, in Washington, D.C.

Q. At that time did Audrey make her home with you and her mother? A. No, she didn't.

Q. Where was Audrey living at that time? A. She was living with her aunt, I believe it was, in Warrenton, Virginia.

Q. At that time how old was Audrey? A. I don't exactly know. Her mother never told me exactly what her age was. I assumed she must have been around four or five.

Q. What year was this that you married her, forty-what? A. 1947.

Q. It was your impression Audrey was then approximately four years old?

119 A. I said I wouldn't be positive on her age; she could have been six as far as I know.

Q. Have you since that time learned Audrey's birthdate?

A. No, I haven't.

Q. Has Mrs. Tansimore ever told you how old Audrey was?

A. No, she didn't.

* * * * *

Q. Do you know when Audrey finished high school? A. I only heard her say, I couldn't be positive that she had graduated.

Q. When was that? When did she say she had been graduated?

A. When she came to Washington, D. C.; I saw her the first time after arriving here from Pennsylvania.

120 Q. What year was it? A. In 1961, last year, around July or August, I assume.

Q. Now directing your attention to your relation to Audrey's mother, how did you and Audrey's mother get on as husband and wife?

A. There was no kind of a harmonious home life.

Q. Did you have arguments and spats and bickering and fights?

A. All the time.

Q. Why? A. Well, it started immediately after I was married, after three months of marriage. One day I was sitting down reading after coming from work. Something hit me beside the head. It was a clock. I jumped up startled and asked her what was the matter. She started screaming and hollering and pulling her hair and said she is going to call the police and have me arrested. I had never seen anybody act like that before. So I walked out the house and went around to my uncle's on 1117 - 21st Street, Northwest, where my uncle lived, and stayed around there all night before I came back to go to work the next morning.

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130

THADDEUS E. TANSIMORE,

defendant herein, resumed the witness stand and testified further as follows:

DIRECT EXAMINATION (Resumed)

BY MR. DAVID:

Q. Now Mr. Tansimore, getting back to the situation between you and your wife, tell us more about that, about the difficulty between you and your wife. You said you were sitting in a chair and you felt something hit you beside the head and you looked and it was a clock?

A. That's right.

Q. And your wife, I believe you said, called the police?

A. She threatened to call the police but I left, I had walked outside and looked back wondering what was going on because I had never seen anyone act that way before, pulling their hair, screaming and hollering for nothing. I hadn't touched her, was reading the paper. So I walked
131 out and she came to the door saying she was going to No. 3 Precinct and get the police. I said, "What for? Nobody done anything. What's the matter with you?"

So I couldn't talk with her and I walked around to 1117 - 21st Street, Northwest, to my uncle's house, about two blocks away.

Q. Do you know whether she did actually call the police?

A. No she didn't, because the landlady where we were rooming at that time managed to calm her and start consoling her in some way to quiet her down.

Q. Has she ever called the police on you? A. Numerous times.

Q. Well tell us about one or two of them. A. That was the first time. And after that, during the whole five years that I maintained a home which she stayed in when she felt like it, and stayed away when she felt like it, well, when she was there she would make excuses for no reason whatsoever and say she was going to call the police, just be in the house for nothing.

Other times she has stated to me that she was going next door to visit girlfriends of hers, and about an hour later she would come back

with at least two police officers, they'd come in the door, I'd be home reading the paper, listening to the radio or doing something else.

132 Q. What would the police say to you? A. When they came in, I would look around startled, surprised, and ask them what's wrong. I'd say, "What's the trouble?" And they would say "Your wife here has complained against you." I said, "Complained for what?" I says, "Nobody done anything that I know of." So she would go into her hysterical act, start screaming, hollering to the top of her voice, pulling her hair.

Q. Did the policemen ever tell you what she was complaining about? A. He would say that she said that you threatened her or you assaulted her. I said, "Well, do you see any marks on her?" I said, "I haven't touched her."

Q. All right. Now, directing your attention to the U. S. Attorney's Office in the Municipal Court, has your wife ever had you called into that Court? A. The District Attorney's office?

Q. Yes. A. On at least three occasions, I would say.

Q. What did she charge you with there? A. One time she was there complaining I had assaulted her and threatened her, and I received a letter to go down there. I went down there and talked with them about it, and she had no marks or scratches or scars on her.

133 Q. What was the result of that hearing at the District Attorney's office? A. Well, they only said I could go.

Q. And this happened on each of the three times that she hailed you into that office? A. That's at that office. That doesn't take care of the precincts and Women's Bureau she used to go to.

Q. She went to the Women's Bureau? A. That's right.

Q. And filed complaints against you there? A. She attempted to have me arrested there. I would be on my job at the Labor Department as a Mail Clerk and I would receive a telephone call --

MR. BLACKWELL: If Your Honor please, I submit this is immaterial, as far as this case is concerned. This is going far afield.

THE COURT: Go ahead.

THE WITNESS: My wife annoyed me at work. She annoyed me at home. She threatened me all the time, and up until August the 19th of 1952 was the last time she obtained a warrant for my arrest on false statements. I was arrested by about 25 police officers. I had done nothing to her. She had no scars or scratches on her. She stated I threatened to assault her.

THE COURT: Did you say 25 police officers?

134 THE WITNESS: It was at least 25, I would estimate, of the ones that dragged me out of the place for no reason whatsoever.

BY MR. DAVID:

Q. What happened with that charge? A. It was nullo processed because there was no evidence I had done anything to her.

Q. You mean it was nolle prosequid? A. Yes, I had done nothing.

Q. Did you ever file a complaint against your wife in the U. S. Attorney's office in Municipal Court? A. I have on at least two occasions.

Q. Did you ever file a complaint with Mr. Acheson? A. Since I have been in this trouble here, I have written him a letter stating certain incidents that happened from 1947 up until the present time, stating that she had made a habit of attempting to have me arrested.

Q. Did your wife ever, according to your knowledge, did she ever engage any men to follow you or threaten you with bodily harm? A. She orally and verbally threatened me at all times when I was living with her, that she would kill me or she would have some of her friends to do it, and there was one occasion on Park Road and Water Street, Northwest, when I had just left where she was living at the time, and left some money there, and she created one of those hysterical scenes there and threatened me, that she would have me arrested, or she and
135 her friends would kill me. And I left the place and only walked a block away and three men in an automobile tried to run me down and since --

Q. Who were these three men? A. The car moved so fast I couldn't identify them.

Q. Were there any men in your wife's company when she threatened you at the Park Road address? A. There were some young men that lived in the house where she lived. I didn't go in at all, I only stopped at the door, but I had seen one or two of those fellows in there on other occasions.

Q. Now she threatened you and you left the place? A. That's right.

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136 Q. Now after you left the place, how far did you get before you saw this car? A. It was at the first street, which was Park Road and Water Street. I stepped off the curb to cross the street, this automobile came rushing from around out of the alley there some place and ran straight towards me. I had to run back on the sidewalk to get out of the way. I just saw it in time. One of his wheels came up on the curb. Then he put it in another gear and went off real fast.

Q. Now since 1952, have you seen your wife often in the company of other men? A. Numerous times.

Q. When was the last time? A. The last time I would say I saw her in the company with another man was where she lived at or did live at 1203 R Street.

Q. When was that? A. I would say February or March of 1961.

Q. Have you ever seen your wife in company with other men in a compromising position? A. I stopped past this same address on one occasion to leave some money, and I knocked lightly and there was no answer, and I walked in where she lived and she was sitting very close beside a strange man, to me, on the davenport. I knocked on the door

137 and she got up all of a sudden and asked me in a sarcastic tone of voice, "What do you want around here?" And I told her, I said, "Well, I only came by to leave what money I have to leave with you," and on all of those occasions that I have seen her with these strange men, I never said anything to them because I didn't know their names, and to avoid any trouble I only transacted my business with her and departed.

Q. Now, what is your physical condition, Mr. Tansimore, are you suffering from anything? A. Yes, I am.

Q. What is it? A. At the present time I have a ruptured condition in my groin, privates, that would prevent me from having relations with this girl who is accusing me.

Q. What about some other woman? A. Any woman. I have not had relations with a woman for at least -- if you want me to state it, I can tell you.

Q. Tell us. A. Since I was on vacation.

Q. When was that? A. July of 1961.

138 Q. Now, describe this condition to us. A. It is a ruptured condition that I have that originated during the time that I was working at the Eye and Ear Hospital on 15th Street, Northwest, because of the fact I was doing heavy work on my feet, which I have a service connected condition for flat feet.

Q. Do you wear a truss for this ruptured condition? A. I wore a support.

Q. You wear a support? A. That's right.

Q. Does something protrude out? A. That's right.

Q. How far out does it come? A. About --

Q. How many inches? A. About the size of a baseball when it comes down. Only times it goes back is when I lay down on my back in the bed. If I'm on my feet it comes down. On the jobs I worked on which have been unsuitable to me because of the condition it has been aggravated. And that particular day I had worked all day, had been on my feet fourteen hours that day.

Q. You say it's about the size of a baseball? A. That's right.

Q. How far down your groin is it? A. Right in my scrotum -- around my penis and scrotum.

Q. Right in that area? A. That's right.

139 Q. Now, did Joyce have any friends? A. Who was that?

Q. Audrey, I'm sorry. Strike the word Joyce. A. Audrey. I have seen her in the company of at least two men besides others that I have heard her mention through conversations in the period of time I have been around her.

Q. Do you know this fellow Jimmy that is supposed to be her present boyfriend? A. Not by his name. I have seen her with two men, I don't know the names of the men I saw her with. It could have been him.

Q. Have you ever seen Audrey in a compromising position with a man? A. I most certainly have.

Q. You have? A. That's right.

Q. Tell the Court about it, please. A. I stopped past where she lived at 1302 R Street, Northwest.

* * * * *

140 Q. The time of it, the day and the year. A. I would approximate that it was no less than two weeks after this charge was made against me that I went past there on a Saturday which would have been October, 1961, around the first of October, on a Saturday evening, to leave some money as I generally did at the end of the week.

I walked up the steps and got to the top of the steps. I wasn't walking heavy because of these flat feet I have. I wear cushioned shoes, cushions in my shoes, and I went up the steps, arrived at the top of the steps and the door was cracked, and I looked in because I didn't know who was there. I just assumed the family, the children and all may have been there.

So I looked in. When I looked in this fellow, I don't know his name, he was between her legs back in the hallway, and she only had on this bathrobe, I guess you would call it, with nothing underneath of it.

Q. What did you do when you saw that? A. Well, my first impression was that I had walked up on something that somebody didn't want me to see, so I stepped back down the steps about three steps and made some noise and said, "Is any body home," and when I said was anybody home, this fellow, he moved back from her and then the two were still there awful close together, but he wasn't directly on top of her when I first walked upon them. So I asked her, after he moved back,

141 I said, "Is your mother home?" She said, "No." I said, "Well, who's home?" She said, "Nobody but me," and she didn't mention his

name. I said, "I just stopped by to leave what money I have here." So she walked from him back into the living room, I guess they have there, and I took the money out and I wrote a receipt and asked her would she sign it because her mother always attempted to establish the fact that I didn't contribute any money toward these children, therefore, I requested receipts.

Q. How much money was that on that occasion, if you remember?

A. On that occasion it was \$10.

Q. Now, has your wife ever told you that she had been raped?

A. Yes, she had, at that address, 1302 R Street, Northwest.

Q. The same address? A. The same address. She admitted she had been raped there.

Q. Did she file a complaint with the police?

* * * * *

142 THE WITNESS: She told me she had filed a complaint. The police officers had been to where she lived there and talked it over with her, whatever went on. I wasn't there when it happened. I didn't live there. I only went there to leave money. Well, I didn't question her about it because of the way we got along, I didn't have too much conversation with her.

BY MR. DAVID:

Q. Where was this supposed to have taken place? A. 1302 R Street.

Q. Where in 1302 R Street, in the basement or on the roof?

A. Joyce and Carl told me --

MR. BLACKWELL: I object to what Joyce and Carl told him, Your Honor.

BY MR. DAVID:

Q. If you know, tell us where this rape was supposed to have taken place in the building. A. In the building.

Q. Where about in the building? A. In the hallway on the floor.

Q. Did she tell you who this man was? A. No.

143 Q. Or did you find out from the Police Department who the man

was? A. I didn't question them about it. I didn't have any part in it because I was separated from her. As I said, how I got along with her, I didn't have too much to do with her except transact business, that's all.

Q. Do you know whether or not there was ever a trial by virtue of her having filed a complaint against someone for having raped her?

A. I do not know.

Q. Now, directing your attention to this date in question here, or about a week previous, had Audrey or any of your children been to your house to ask for money from you? A. On Saturday, October 14th, I think that's the correct date, October 14th, the Saturday before this incident anyway, Audrey and Carl, the nine-year-old boy, came to where I live at 1624 - 15th Street, Northwest, after I had came in from work around 6:30 on that day, and stated that they came by for any money that I had to give them. And I gave them \$7 on this Saturday. At the same time they was there for about 20 minutes, I gave them some cakes I had there, fruit and candy.

Q. Some cakes? A. Cakes; a box of cakes.

Q. What is that? A. Little cookies, fruit and candy. They sat
144 there eating those and talking to me. Audrey told me, she said there was some strange men had been to where they live at 1302 R Street, Northwest, had came in the door while she was in the bed and she turned around and raised up and these strange men that she didn't know were standing over her bed and she said she told them to get out of there.

And I asked her, well what did they try to do, so she said he acted like he wanted to get into bed with me. So the boy Carl was there in the presence when she said that, and I didn't want to make such a direct statement in regard to sex in his presence, so I cut the statement off by saying what did they do when they were there, and she didn't answer, she didn't say what the strange men did on this day when she said they were there, but she admitted strange men came up there, opened the door where she lived, came in while she was in bed, and was standing there, but never told me what they did.

Q. Did she ever tell you how she got rid of them? A. She didn't get around to it.

Q. Now you say you gave her \$7? A. That's right.

Q. What was the \$7 for? A. It was for just general money, food money, whatever they wanted to use it for. I told her that was all I had on me that day because I had spent \$10 on that dog they had around there
145 the same week.

Q. Whose dog was it? A. It was their dog.

Q. By "their," whom do you mean? A. Joyce and Carl's dog, and they wanted a tag for this dog, harness and other things to make him legal to walk in the street.

Q. You had given them \$10 for that? A. I bought the license that week, bought the harness and leash and all that. It came to around \$10. I told them I was a little short and I didn't have but \$7 that day and next week, I says, when pay day comes around, I'll have more money.

Q. Where were you working at this time? A. DuPont Plaza Hotel.

Q. What were you doing there? A. Houseman.

Q. Now when was the next time you saw Audrey or any of the children in regard to any money? A. On Sunday, when I came in from work, which I worked Sundays too. I had only been there about an hour from work when Carl came around. In fact, Carl came practically every day for spending money, which I gave him, in order to buy the things he wanted to buy, and I used to send some to Joyce and Audrey too when I
146 had it to spare, and he came practically every day for spending money and he came that day on the 15th, which was a Sunday, after the 14th, and said that Audrey wants some money, and I said what for, I said, I just gave you all some money last night. I told you last night I would be short until pay day. So he didn't exactly say. Then he was playing around in the room with some magazines I had there, and then he mentioned the dog. But he didn't say he wanted money for the dog.

Q. All right. A. He also said she wanted to come around there.

Q. She wanted to come to your room? A. That's right. He told me she said she would come after it if I send word back through him what I wanted her to do.

Q. What word did you send back?

* * * * *

THE WITNESS: When he said that she would come around there after it, she told me to tell you she would come after the money. I said I just gave you all some money last night, so I said you go back and tell her I don't have any to spare today, unless it's an emergency, possibly I can arrange to find it some place, and tell her don't bother coming
147 around here because I just got in from work and am tired and I want to rest, and I'll stop by there later on, that's what I told him, when I came out, which I did, around nine o'clock on that Sunday night and there was no one home.

I knocked on the door. There was a light in there, sounded like somebody was moving around in there, but nobody answered the door. So when I came back down to the front of 1302, there was this lady who testified here on this stand today, the stout one, outside at 1304 R Street, and I asked her, I'm quite sure it was her, I asked her was anyone home upstairs and she said yes, there must be somebody up there, she said the light's on up there.

I said I just went up there and knocked on the door but I didn't get any answer, and the girl said she wanted to see me on some business or something, and I wanted to find out what it was all about.

BY MR. DAVID:

Q. So you didn't see her? A. I didn't see her.

Q. You went about your business after that? A. That's right.

Q. Now this place where you live on 15th Street, you describe the physical setup of your apartment or room. What do you have, a room or apartment, or what is it? A. I only have a room in a rooming
148 house.

Q. Is it on the front? A. Basement front; that's right.

Q. Basement front? A. That's right.

Q. How does one effect entry into that room? A. By going down under the steps where you turn, and there's a door under the steps that enters right into the basement.

Q. Does the room have a window? A. It has two windows.

Q. Two windows: A. Yes.

Q. And a person standing in front of those windows -- how high are the windows off the ground? A. They are right level with the ground.

Q. That is, the bottom of the window is level with the ground?

A. That's correct.

Q. What do you have in the way of decoration inside, over the window? A. Just a pair of plastic curtains put there by the landlady and Venetian blinds, that's all.

Q. Can you see into your room from the area underneath the steps?

149 A. You can see into it from the first level or even from the sidewalk, if the Venetian blinds are open.

Q. If you know, on October 17, 1961, were the Venetian blinds open?

A. I always left them at least two inches open, about like that (indicating).

MR. BLACKWELL: I submit, Your Honor, that is not a responsive answer.

THE COURT: The answer isn't responsive.

THE WITNESS: What was the question again?

MR. DAVID: The Court has ruled upon the objection of the prosecutor.

THE COURT: It is not necessary for you to explain the ruling of the Court.

The answer was not responsive. Repeat the question.

Were the blinds open on October 17?

THE WITNESS: I would say they were open at least two-and-a-half inches.

BY MR. DAVID:

Q. Now, were the slats open so that anyone outside could see through the blinds? A. If they wanted to look in there, they could have.

Q. The slats were not closed? A. No.

150 Q. They were not in a closed position? A. Only time I closed the slats was when I went to sleep and didn't want the light to come in there or to be disturbed from outside distractions.

Q. Now, are there any other roomers at 1624, in the basement?

A. In the basement?

Q. Does anyone else live in the basement? A. I only had one room in the basement.

Q. Does anyone else live in the basement, other than you? A. No one lives down there, but they all use the kitchen down there around the clock. They cook down there. Everybody in the house cooks down there.

Q. How many rooms are in the basement? A. Oh, there's my bedroom there is the furnace room next to it, and a kitchen beyond that. And all the roomers use the kitchen down there.

Q. Is there a door to the kitchen? A. That's right.

Q. Leading from a hallway? A. That's right.

Q. Now, how does one get into your room from the street?

A. Well, there are two ways, or three ways. You could come in the back way, you could go up to the first floor and come down from inside, or go down under the steps from outside and come in that way. There

151 are three ways to go down in there.

Q. Now on October 17th, did you go and get Audrey and take her to the house for the purpose of giving her some money? A. When I left where I live at --

THE COURT: Did you hear the question? The question is whether you went and got Audrey to take her to the house for the purpose of giving her some money.

THE WITNESS: When I left home I didn't have intentions --

MR. BLACKWELL: I submit, Your Honor, he may answer yes or no.

THE COURT: The question is did you go and get Audrey and take her to your house for the purpose of giving her some money; that was the question counsel asked you.

THE WITNESS: I didn't leave home with those intentions.

BY MR. DAVID:

Q. I beg pardon? A. I did not leave home with that plan.

Q. I gather then that you left home with another plan. A. That's right.

Q. What was the plan? A. Was to go and pick up my automobile where I had it parked in the 1400 Block of Riggs Street, I think that's the street below R and S -- I left it there from the night before. At the
152 same time I wanted to get an electric lantern out of there that I had in there to use for a light in my room because the landlord had told me that there possibly may not be any lights in the house at night or there would be trouble with the lights, and if I could make out until tomorrow by making light in some way for myself, everything would be all right.

So I was going to get the automobile and get the lantern out of there, and the car being parked so near to where 1302 R Street is when I pulled off with the car and turned down 13th Street, I had to pass right by where they live at on the corner, and when I drove past 13th and R and went across R Street and parked on 13th Street on the righthand side, between Corcoran and R, heading south towards Logan Circle, I got out of the car and decided I would stop by there to find out why this girl keeps sending around there for money when I had told them on Saturday I would be short until pay day, so I got out of the car, walked around the corner and just as I got up the steps to go up to 1302, I saw Audrey on the sidewalk coming down towards home and I looked around and I saw her and she came up to the doorway of 1302 and I asked her, I said What is it that you want some more money for because I had told you I was short until pay day and I put extra money in buying these things for the dog, and I had some other unnecessary expenses that came up this week that took everything that I had on hand.

153 So when I asked her about the dog -- the dog was supposed to -- his expenses and the veterinarian was supposed to be taken care of by some man that lives up the street, as I was told I didn't have to leave any money for this dog because the man up the street was going to pay for it, so when I asked her that, I told her, I said, if you still need money, I said, I don't have but two or three dollars with me here, because I didn't bring anything out with me, but I do have a few dollars in my room

down there, and that's all I have, but I don't have it with me. So that's when she said she would go with me to get it.

Q. She said she would go with you to your house to get the money?

A. That's right.

Q. Did she go with you? A. She did. After she had went upstairs and I asked her where Joyce and Carl was, and she said she didn't know, they must be up the street.

Q. On this particular occasion how was Audrey dressed?

A. She had a pair of slacks on and as I recall, a sweater or a blouse, I'm not sure which it was.

Q. Would you describe the slacks for us, please? A. From what I saw of them, looked like khaki color to me. I didn't notice them that close.

Q. Were they ladies' slacks? A. I didn't notice them that close;
154 I guess they were.

Q. Did you notice how they were fastened or if they were fastened?

A. When she first came into my immediate presence at 1302 R Street, Northwest, she was fooling with her clothes. And then when I asked her about the money, she said she was going upstairs for something and she went up there and I says I'll stand here and look and see if I see Joyce and Carl.

She went upstairs for a few minutes and she came back down and I says I don't see them, I says bring them along too. I wanted them to go too.

Q. What did she say when you stated that to her? A. She said that they weren't home.

Q. Then what did you and she do? A. Well, when she said that, I told her, I said if they're not here, I said where are they. She said they were up the street some place. I said I don't have too much time, I said if you want to go, you can come on. She went around and got in my car, I pulled off, went down to P Street, went out P Street, three one-way streets in the neighborhood of where I live, there's Q Street, Corcoran Street, and R Street, all one-way streets. I drove around those blocks

at least fifteen minutes trying to find a place to park, and I eventually found a place to park in the 1400 Block of Q Street, Northwest, about two blocks from where I live at.

155 Q. All right. Did you and Audrey alight from your car in the 1400 Block of Q Street? A. That's right.

Q. Then did you walk from there to your residence, 1624?
A. That's right.

Q. And which entrance did you use, the back, the basement, or the upstairs? A. I used the one under the steps.

Q. Now the outside door leading into the basement, was that door kept locked or unlocked? A. It's always locked. I have keys to it. At least, most of the time it is, unless some of the roomers are down there cooking and got the door open for air.

Q. If you remember, on this particular occasion, October 17th, was that outside basement door locked or unlocked when you arrived there with Audrey? A. I'm quite sure it was locked.

Q. And did you use your key to open it? A. I used my key.

Q. What type of door is that door; any glass in it? A. That's right, there's a window in it.

Q. One-pane window in the door? A. Four panes.

156 Q. What they call four lights? A. I mean, the door has a window in it but it's in four pieces. In other words, half of the door is glass.

Q. After you get through that door, where is the door to your room in relation to the door you just described? A. Just inside the front door.

Q. To the right or left? A. To the left going in.

Q. To the left? A. That's right.

Q. Did you use the key to open your room door? A. I did.

Q. And then you and Audrey went into your room? A. That's right.

Q. What did you do immediately after having entered your room?
A. When I first went in I cut the light on. I had been out and obtained some candles to make preparation for this light emergency along with the lantern I was planning on using, and I told her, I said, this room is

really in a mess tonight, I says, because when I first arrived from work I learned that the lights were off here and I had to go down to the 5 & 10 on 14th Street and P, and buy some candles to make some light here, and I says, I really have a terrible time around here tonight.

157 So that was my conversation when I first came in after I turned the light on from up there on the ceiling. And I had this bottle of whiskey setting over there which was about half full out of a half pint. In other words, half of a half pint.

Q. Where was it sitting? A. On the table with a group of soft drink bottles and glasses. It was the only bottle of whiskey setting on that table.

Q. Did you take a drink from that bottle? A. I poured about one inch of whiskey in a small glass and drank it, and excused my self from her at first.

Q. Did you give Audrey any of that whiskey? A. I did not.

Q. You said just now you excused yourself; where did you go?
A. After I drank the whiskey I went out of the room, went into the furnace room, which is the second room, to see if I had left some fuses in there where I had been trying to get the lights going before I had discovered what the trouble was.

Q. How long were you gone? A. I left the furnace room and I went on back into the kitchen to wash my hands with some Ajax that was back there, for the grease that was on them.

158 Q. Where had you gotten the grease? A. When I first went to pick my automobile up, it wouldn't start so I raised the hood up and one of the wires in there had recently been put in there, it runs from the coil to the distributor, I put it in myself, attempted to save labor for mechanics, and I evidently didn't put it in proper and the car wasn't running exactly right, so I had to take and cut some of the rubber back where the wire would be exposed, where the metal piece would go back in there. That's how I got the grease.

Q. How long would you say you were away from Audrey altogether?
A. She wasn't at my place over 15 minutes.

Q. How long were you away from Audrey? A. I would say from the time she was there, I was back in the kitchen about twelve minutes out of the fifteen I estimate she was there.

Q. Now, when you came back into the room, did you observe the whiskey bottle? A. It was moved from where --

Q. It had been moved? A. That's right, she had a glass in her hand and the bottle had been moved and the level was down.

Q. You mean by the level being down there was less whiskey in the bottle? A. That's right.

159 Q. And Audrey did have a glass in her hand? A. That's right.

Q. Was there any whiskey in the glass at the time you returned?
A. In her glass?

Q. Yes. A. She had something in it. The whiskey was down so I presume it must have been a drink she fixed for herself.

Q. All right. What happened next? A. When I first came back into the room I asked her, I says, I heard you all are having trouble around there about strange people walking in that you don't know, and she said that she had found a way to get rid of them. And I says What you mean? So she said Well, I just holler at them through the door and that's when I said I don't know what kind of place you all got around there but I said ever since your mother been living there seems like some kind of disorderly house to me.

I told her, I said I tried to provide a home for your mother since she's been separated from me, and I said, I even offered her some money and told her I would establish the place and she refused to accept it and I had the children in mind when I made that offer.

160 Q. Now get to the money. What did Audrey say to you about the money? A. Oh, that was her purpose in coming, the money. I had only immediately returned back to the room and after taking care of these emergencies about the lights and washing my hands, that's when I asked her, I says, are you ready to go? And she said Yes, she says Yes, I guess I have to get on back to see if my boyfriend is still there.

When she got up -- she had taken her coat off and thrown it over the back of the chair -- she put it on, stepped outside the door. The door was open the whole time she was there. I pushed the door half-way closed so that she wouldn't see where I had this few little dollars I had hid there because I had a practice of when I had some money I never let nobody see where I put it but me.

Q. Where did you have this money hidden? A. In a drawer there, in a dresser.

Q. So you went to the dresser drawer to get the money?

A. That's right, after she had stepped outside.

Q. Did you get the money? A. I got the money.

Q. Did you give it to Audrey? A. I took out the money --

Q. How much did you take out? A. I gave her eight dollars, on that occasion.

161 Q. Did you ask her what the money was to be used for? A. She said it was for her own personal use.

Q. Did you ask her before she said anything what it was to be used for by whom it was to be used? A. I had asked her about this dog --

Q. No, no; did you ask her is this money for yourself or for the children? A. She said it was for herself.

MR. BLACKWELL: If Your Honor please, I submit he hasn't answered the question. The lawyer asked him whether or not he asked her what this money was to be used for. He never has answered whether he asked her or not.

THE COURT: The question was whether you asked her what the money was to be used for.

THE WITNESS: I asked her did she really need some money. She said she did. I didn't ask what purpose. She said she really needed it for her own use.

BY MR. DAVID:

Q. Had you ever given Audrey money for her own use prior to this particular occasion? A. During the length of time that she had

been back in the District of Columbia from Pennsylvania, it had been about two months, and I had seen her about three or four times. I gave her two or three dollars when I had it, whenever I came in contact with her around with the other children.

162 Q. How many times would you say during the three months or two months that you mentioned that you had given her two or three dollars, how many times was it, for her personal use? A. Oh, I would say on at least five occasions.

Q. And it was all right with you at this time that she wanted eight dollars or you gave her eight dollars for her personal use? A. That's right. She impressed me that she wanted it for some reason very anxiously, and she didn't state why, so I didn't question her about it.

Q. All right. After having given Audrey the money, what took place next? A. That was when she said that she would walk and I said no, that's all right, I'm going back out, I says, I'll take you back home. I says, you don't have to walk by yourself since Joyce and Carl didn't come with you. So we came out and walked out to my car on Q Street, got in, I took her back to 13th and R, she got out, went on across the street. I heard no disturbance, no hollering, no screaming, no nothing, because as soon as I pulled off this car gave me trouble again.

Q. Did you ever, while Audrey was in your room or in the basement, or in the hall, or in the area in front of the basement, did you ever put your hands on Audrey? A. I did not.

Q. Did you ever try to embrace Audrey? A. No, I didn't.

163 Q. Did you ever choke Audrey? A. I did not.

Q. Did you ever threaten Audrey? A. I did not.

Q. Did you have any weapons in your room? A. No.

Q. Such as a gun? A. No.

Q. A knife? A. I have an all-around pocket knife that has a screwdriver, bottle opener and letter punch, a Boy Scout knife, in other words. That's all I have.

Q. Where was it? A. I had it in there at the time.

Q. In the room? A. That's right. I had used it to fix this wiring, but she had never seen it because I had it put away. I use it for fixing my automobile.

Q. Did you ever at any time, while Audrey was in your room, block her egress from the room? A. I did not.

Q. Did you ever tell Audrey to shut up, stop talking loudly while she was in your room? A. I did not.

164 Q. Did you ever put your hands between Audrey's thighs?
A. I did not.

Q. While she was in the room? A. No.

Q. Had you ever had any sexual relations with Audrey before this time? A. I have never had any, before or after, or no time.

Q. Does your wife hate you? A. What's that?

Q. Does your wife hate you? A. She gives me that impression by the things she's done to me and tried to do.

* * * * *

166 Washington, D. C.
March 5, 1962

* * * * *

167 CHARLES MCGREGOR CRITTENDEN

was called as a witness by the defendant, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVID:

Q. Keep your voice up, please, so that everyone may hear you without any difficulty.

State your name and your address. A. My name is Charles McGregor Crittenden. My address is 1011 S Street, Northwest.

168 Q. What is your profession, Doctor? A. I am a physician.

Q. How long have you been practicing medicine? A. Since 1952.

Q. Are you a general practitioner? A. I am.

Q. Doctor, have you had occasion to visit and examine the defendant in this case, Thaddeus Tansimore? A. I have.

Q. Will you tell the Court and jury what you found as to his physical condition? A. I found the defendant had an inguinal hernia about oh probably three by three in dimensions, three by three inches in dimensions, and that it is a reducible hernia in that when he lies down, the hernia will recede back into the abdomen --

MR. BLACKWELL: I am sorry. I want the doctor to speak a little louder, if Your Honor please.

THE COURT: Will you repeat that last statement?

THE WITNESS: I found that the patient had a hernia, an inguinal hernia, --

THE COURT: Inguinal?

THE WITNESS: Inguinal. I-n-g-u-i-n-a-l hernia.

THE COURT: Inguinal means what?

169 THE WITNESS: Well, it is a hernia, a protrusion of the abdominal contents between the left -- the right thigh and his scrotal sac and this hernia is reducible in that when he lies down, it will go back into the abdomen, its normal habitat.

BY MR. DAVID:

Q. Now, Doctor, how large would you estimate it to be?

A. I estimate it -- when I saw the hernia, it was about three by three inches in dimension.

Q. Could you demonstrate for us, please, about the size of it?

A. Well, it was almost the size of my fist.

Q. Now, Doctor, if the defendant were to work on a job that required his standing all day, where he would have -- requires physical exertion, what would be the effect upon this inguinal hernia?

A. It would make it come down out of its normal habitat and bulge out like it was this morning only more so.

Q. How close would you say that this protrusion was to his scrotal area? A. It was right above his scrotal sac.

Q. Just above -- A. Just above his scrotal sac, and from his history he says sometimes it does go down into the scrotal sac, but

this morning, I did not observe it going into his scrotal sac.

170 MR. DAVID: Thank you, Doctor. I have nothing further. You may cross examine.

CROSS EXAMINATION

BY MR. BLACKWELL:

Q. How long have you known the defendant, Doctor? A. I first saw the defendant this morning about 9:20.

Q. Well, now this inguinal hernia which you have testified this defendant has is not a serious one, is it? A. Well, we consider any hernia a serious thing from this viewpoint, that it is possible for that hernia to become incarcerated. In other words, the blood supply to that part of the intestines would be cut off and it would become prostrated and gangrene would result, but I might add that the patient said he had had it for quite a while and sometimes this hernia will abate, not dangerous, let us say, for years and years, but I couldn't testify that it might not become dangerous today or tomorrow.

Q. Now, Doctor, how long did the patient tell you that this hernia had existed? A. Well, he said he had had it for many years.

Q. Many years? A. Many years.

Q. Did you try to pin him down what he meant by many years?

A. No, I did not.

171 Q. Well, could you, from your examination, determine whether or not he had this hernia for five or six years? A. I would say yes.

Q. Would you say it has been in practically the same condition for the last five or six years, or it has somewhat increased in intensity? A. Those things, they do increase in their ability to protrude from the abdominal cavity as time goes by.

Now, whether or not his has reached a maximum, I could not say.

Q. Well, does one require medical treatment for such a condition?

* * * * *

A. Medical treatment can be had for this sort of hernia, but some people don't get it because -- well, they aren't bothered by it too much, so they don't get it, but there is an operation for an inguinal hernia.

Q. As a matter of fact, the reason some people don't get it is because it is not very serious and it doesn't disturb them very much, isn't that right? A. Some people it does not disturb, that is correct.

172 Q. Now, you have indicated that this is a reducible hernia.

A. That is correct.

Q. Now, would you also go so far as to say that this is a non-tender hernia? A. I would not go so far as to say that, sir.

Q. Why wouldn't you? A. Because the patient did have some pain when I was reducing it and he told me it was painful when I was reducing it and he told me also that he works many hours of the day, 12 to 14, that it does become painful and I couldn't testify that it is not painful because I haven't seen him after he worked for 14 hours a day.

Q. Well, now, you say it becomes painful after -- it would become painful after a person worked all day? A. That is correct.

Q. Especially 12 or 14 hours on his feet? A. Well, I would say less than 12 or 14 hours. That was a statement that he said that -- I suppose 14 hours -- but I dare say that a man that does heavy work like heavy lifting and this thing will become painful and I would say in less than six or eight hours, sir.

Q. Well, now, to what degree of pain would you say, Doctor? Would you say it would become so painful that the man would want to
173 lie down and rest and not walk around or drive around the streets of Washington? A. Well, I believe that if it became that painful he would have to stop work and seek some rest, lie down, because it is the natural thing for a person to try to alleviate his own pain.

Q. So then your testimony is that if this hernia -- would become painful in your opinion after he has worked say for six or eight hours, and especially 12 or 14 hours, and after that period of time a person suffering with a hernia, if he was suffering, as he said he was, he would -- the first thing he would want to do is to lie down and rest, is that right?

A. I would say so, yes.

Q. Now, Doctor, - I would like to request this be marked as Government's Exhibit No. 2 for identification, please.

(Medical Report marked as
Government's Exhibit No. 2 for
identification.)

THE DEPUTY CLERK: Government's Exhibit No. 2 marked for
identification.

BY MR. BLACKWELL:

Q. I now show you, Doctor, what has been marked as Government's
Exhibit No. 2 for identification, which purports to be a medical report of
a Dr. Sager here at the D. C. District Jail which was made on Saturday
of last week, March 3, and I ask you, sir, to take a look at his report

174 in this case, particularly, with reference to the hernia, and tell
us whether or not you are in accord with that report, or not.

A. (Examines.) Well, as I see, right inguinal hernia, reducible, non-
tender --

THE COURT: The question is whether you are in accord with
this other doctor's report? You do not have to read it.

THE WITNESS: Well, I am not in accord totally with the non-tender,
because he did have some pain when I reduced it this morning.

BY MR. BLACKWELL:

Q. How could you tell whether he had pain without -- A. Because
he flinched when I was reducing it for him.

Q. Could he have been malingering? A. It is possible, but I don't
think so.

Q. Now, Doctor, I believe you said that Dr. Sager there has diag-
nosed this case as a hernia reducible -- same as you? A. That is
correct.

Q. But he goes a step further and says non-tender. A. Well, now,
Doctor --

MR. DAVID: If the Court please, I am going to object to all of
this testimony stemming from that record. Doctor Crittenden did not
write the record and the only way Government counsel can introduce any
testimony out of that record is to bring the doctor here who made it.

175 THE COURT: You are a little late in making the objection. I would have sustained it in the first place. I will sustain it now. The doctor should be here.

BY MR. BLACKWELL:

Q. Now, Doctor Crittenden, would you say that a man suffering with a reducible hernia is not able to perform the sexual act?

A. Sir, will you repeat that question again?

THE COURT: Can he perform sexual relations with this type of hernia?

THE WITNESS: Yes, he can.

BY MR. BALCKWELL:

Q. And if it is non-tender, he could do so with greater ease, is that right?

MR. DAVID: Objection.

THE COURT: It is argumentative. Sustained.

MR. BLACKWELL: Thank you so much, Doctor. I have no further questions.

* * * * *

176 Thereupon,

THADDEUS E. TANSIMORE

resumed the witness stand, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (Further)

BY MR. DAVID:

Q. Directing your attention to the date in question, I believe October 17, the date that this offense is alleged to have occurred, did you work that day? A. I did.

Q. Where did you work? A. Dupont Plaza Hotel.

Q. What is your work there? A. Consists of heavy work, lifting laundry bags, distributing them about the hotel.

Q. How many hours did you work?

MR. BLACKWELL: Your Honor, I submit this is repetitious. The man testified Thursday that he worked 12-14 hours.

THE COURT: I thought we went over that ground. We do not want to go over that same ground again.

177 MR. DAVID: I didn't recollect that we had gotten the number of of hours, if it please the Court, that he had worked.

MR. BLACKWELL: I withdraw the objection.

THE COURT: Go ahead and answer. It will save time.

BY MR. DAVID:

Q. How many hours did you work at the hotel that day? A. I worked eight hours on the hotel job. I was including in the 14 hours the time I spent after returning from work in attempting to secure some type of lighting facilities because of a lighting emergency that was there that particular night and it caused me to be on my feet an extra length of time wherein I had no time to lie down, when I came from work.

Q. Did your hernia come down on that day? A. It was down, as it usually was when I was at work, but I had a support on it and it had been down, I would say, since 12 o'clock of that day.

Q. Was your hernia painful that day? A. Yes, it was.

Q. What type of pain do you experience when it comes down?

A. Just hurts.

Q. Is the pain limited to the area where the hernia is or is it disturbing to other portions of your body? A. Where the hernia is or around my privates.

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Q. On March 3, I believe it was last Saturday, had you done any strenuous work in lifting, carrying anything at the jail, prior to your having been examined by this -- A. No, I had been lying down all day when he called me.

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CROSS EXAMINATION

BY MR. BLACKWELL:

Q. Now, had you been doing any heavy work this morning when Dr. Crittenden examined you? A. I had been on my feet since we got up at the jail this morning, been standing up quite a bit since I got out of bed.

Q. Been standing since you got out of bed this morning? A. Quite a bit, I said.

Q. Well, you had your breakfast after you got out of bed this morning, didn't you? A. That is correct.

Q. Then you sat down until the van came to bring you up, did you not? A. Well, we didn't have any chairs. I had to make some type of temporary seat in the cell, then, by stooping.

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Q. Then you rode and sat in the van while you were in transit from the District Jail to the United States District Courthouse here, did you not? A. That's right.

Q. And when you arrived down in the cell, they have nice comfortable cells in this building, have they not? A. Well, I wouldn't want to sleep on it all night.

Q. Wouldn't mind sitting on it for a while, though, would you? Wouldn't strain you, would it? A. Kind of hard.

Q. Wouldn't strain you, would it, to sit on it? A. Yes, if I had to do it any length of time.

Q. Did you do it a lengthy length of time this morning? A. Well, I have been here since we arrived.

Q. So, is it your testimony or your belief that you had undergone more strain this morning when your doctor, or Doctor Crittenden examined you, than you had when Doctor Sager examined you at the District Jail on Saturday? A. I didn't quite understand that question.

Q. Would you say that you had been under greater strain this morning when Dr. Crittenden examined you than you had been on Saturday when Doctor Sager examined you? A. When -- yes, I would say that, because I have been lying down for five months over there in the jail.

180 Q. Well, now, by the way, who is your regular medical -- who is your regular physician in private life? A. Private life?

Q. Yes. A. Well, I did go to see a Dr. Thiele but he didn't examine me for this condition.

Q. Tell us the doctor who has examined you and treated you, if any, for this condition which you tell us about, this hernia, in private life? A. This condition came upon me during the time I was working at the hospital on --

THE COURT: The question is, what is the name of a doctor who has treated you for this condition?

THE WITNESS: I don't know the name. He was a Veterans' Administration doctor whom I had to examine me for this thing and I didn't know his name and he advised me to -- at that time, about three or four years ago -- and wasn't as bad as it is now, he advised me to wear a support.

Q. When was that? A. When it first started on me.

Q. When did it first start? A. I would say about 1957 or 8, something like that, very small, it was not like it is now.

Q. Well, now, where was this doctor? If you don't remember his name, where was he when he examined you? A. He was a Veterans'

181 Administration doctor, and I don't know his name. He examined me for it and advised me that I could do one of two things, that I could have it operated on, or either I could wear a support and I told him that I didn't like an operation too much, I preferred to wear the support, and so I left then and I managed to procure a support and have worn it whenever that I had to be on my feet continuously.

Q. By the way, now that you mentioned that this Veterans' Administration doctor examined you, that is indicative of the fact that you are a veteran, isn't it? A. That's right.

Q. Have you been in the Army? A. Yes, sir.

Q. You have heard about sick calls when you were there, haven't you? A. Yes, sir.

Q. You know how they line them up in the morning to go to the dispensary, come around, the first sergeant -- A. Yes, sir.

Q. And the company clerk and ask who wants to go on sick call? A. Yes, sir, I have.

MR. DAVID: Objection, if Your Honor please. I see no relevancy to this type of interrogation.

182 MR. BLACKWELL: Very well. I will cease that line.

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BY MR. BLACKWELL:

Q. Have you been on sick call a single day since you have been down in the District Jail since October 18? A. I have not.

Q. You have not? A. No, other than Doctor Sager sent for me the other night.

Q. Oh, Doctor Sager sent for you Saturday? A. Yes.

Q. But prior to that time, you had not been on sick call? A. No, I had a reason for that.

Q. All right. What is the reason? A. Because that was the first time I have ever been locked up or confined and I wasn't thoroughly aware of the procedures over there and with this condition, if that is what you are referring to, it hasn't improved any by being there. In

183 fact, it has increased, because I don't have a support to wear over there.

Q. Are you not wearing a support now? A. No, I don't have one now.

Q. Well, where is your support? You had it on that night, didn't you? A. No, I didn't have it on that night.

Q. Been working 14 hours and didn't have your support on that night? A. I took it off.

Q. When did you take it off? A. When I changed my pants when I came home from work.

Q. Did you take it off when you had sexual relations with Audrey Cubbage in this case? A. You are saying that.

Q. I asked you a question, sir?

MR. DAVID: Objection.

THE COURT: The question is argumentative.

BY MR. BLACKWELL:

Q. Well, I will reframe it. Did you have this support on when you had sexual relations, if you did have sexual relations --

MR. DAVID: Objection.

184 THE COURT: You cannot just be assuming that. Ask him whether he took it off or what he did with it.

BY MR. BLACKWELL:

Q. Very well. When did you take this support off that night?
A. When I first came in from work.

Q. Well, wasn't this a little unusual since you had been working 14 hours and you were in pain, to take your support off? A. I had the same pain practically every day.

Q. Well, now, have you made an effort since being in the District Jail since October 18 to get another support? A. As I said, I am not familiar with the rules over there, because I have never been there before, and I wanted to attempt to find out the proper advice from my counsel, so that is why I made no -- took no initiative upon myself to -- so far as doing these things without being counsel has advised exactly

what to do.

Q. Is it your testimony, if you were in pain, that you would wait to find out from counsel as to whether or not you should go on sick call?

A. Well, nothing they could do for this condition over there that I know of. The doctor stated it is internal and I don't want to have an operation over there. I am not requesting an operation, as I stated to the Veterans' Administration doctor. I didn't care to be cut on so, therefore, I chose the support.

185 Q. Well, did you ever request them for a support over there at the District Jail? A. No, sir.

Q. Now, going back to October 18, I believe you testified on Thursday that you had parked your car in the 1300 block of Riggs Street, Northwest -- A. I --

Q. -- sometime the night before. A. I am not positive as to what is the name of the street, but I think it is --

Q. Let me ask you this. Is it the street between R and S, 13th and 14th? A. That's right.

Q. All right. Well, I think we can agree by stipulation that is Riggs Street, Your Honor.

MR. DAVID: Objection. If my memory serves me correctly, the testimony was the 1400 block of that street.

THE WITNESS: I made a mistake on the number of the street. It was the 1300 block.

MR. BLACKWELL: If Your Honor please, I would like the Court to take judicial notice of the fact that this street was not four crossings --

186 THE COURT: I cannot take judicial notice of the fact because I do not know it.

BY MR. BLACKWELL:

Q. But you do feel now it was 13th Street, is that right? A. I know it was 13th. I made a mistake when I said 14th Street.

Q. Why would you park there on Wednesday night? A. Because in that neighborhood, there is a number of one-way streets. It is awful hard to find a parking place, as I did the night this alleged incident

happened. I drove through those one-way streets three or four times trying to find a place to park and I eventually found one on Q Street, and the night before that was the only street I could find a place to park near to where I live at.

Q. Well, now, the 1600 block of 15th Street is between Q and Corcoran? A. Corcoran, that's right.

Q. Between Q and Corcoran, or between Q and R? A. Corcoran and R.

Q. Corcoran and R? A. Yes.

Q. Well, now, this 1300 block of Riggs, would really be about four blocks away, would it not? A. No, about two and a half, I would say.

Q. Now, it remained there all day Tuesday, is that right?

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A. Yes, that's right.

Q. And you went up there to get your car that night? A. That's right.

Q. I believe you did some work on it, is that right? A. It was a wire, that's right. It run from the coil down to the distributor, a wire underneath of the pressure pump and Mr. Rupert at the Shell Service Station at 15th and Corcoran Street -- and I was attempting to fix this wire down into the distributor myself in order to save myself the labor of the job.

Q. Very well, then after you had your car in motion, after you were able to operate your car, you then went past 1302 R Street, where your stepdaughter lived, did you not? A. I had no plans of going there.

Q. My question is, did you go there? A. After she requested me to come there.

Q. When did she request you to go there? A. She first requested from my little boy Carl on Sunday, the 15th.

Q. My question is, sir, did you go directly there after you were able to get your car started in the 1300 block of Riggs, which is the street right around -- A. That's right. I was passing right by and I

had to pass right past the house and I thought I would solve that errand
188 at the same time in passing the house.

Q. And you did go there then? A. That's right.

Q. Had you ever been there before? A. Well, it was where my children lived. I went there occasionally to leave money for them.

Q. When you would go there, you would go in the house, would you not? A. I would go up the steps most of the time and knock on the door and my wife had so many people accepting money from me for the support of the children, I would have to look on some of the receipts to see who they really were.

Q. Did you do that on that particular day? A. I went this day to see what she wanted.

Q. What did you do? How long did you remain there? A. I wasn't there about 15 minutes, I guess. In other words, I was waiting for her while she went upstairs. I told her I would wait out front and see if I see the children.

Q. You waited out front, is that right? A. That's right.

Q. Then there came a time when she came down and you went on to your address 1624 -- A. That's right.

189 Q. 15th Street. A. I was looking for my little children to ride with us around there.

Q. Had you been drinking this particular evening? A. I had had one shot, that is all.

Q. Does that affect your hernia? A. I take it for to relieve the pain.

Q. Now, then, there came a time when you arrived and you two went on in your place? A. That's right.

Q. One of the first things you did was to check on the lights?
A. That's right.

Q. And the next thing was to go wash your hands, the grease off your hands? A. I didn't arrive at the house until about 15 or 20 minutes after leaving 1302 R Street because of the difficulty in locating a parking place.

Q. There did come a time after that when you arrived home?

A. That's right.

Q. You did just what I state -- that is, you first checked the lights and then you went and washed the grease off your hands. A. Went and got a glass of milk and beat a raw egg up in it and went back to the
190 room.

Q. Now, where was Audrey all that time? A. She was sitting in my room by herself.

Q. And you had had no disagreement with her up to that point, had you? A. I have never had any until this thing originated and I don't know what is behind this thing here.

Q. So then when you came on back -- did you take a drink when you came back into the room? A. When I came back, the bottle was sitting on her side and the level of the whiskey was down a little bit and she had a glass in her hand, so I assumed she was taking a drink and I did take about -- I say a half inch more and I asked her was she late, and I told her to come on and she stepped outside and I went and got the money out of the drawer and came and gave it to her and she said that she better get on back to see if her boy friend was still there.

Q. Did she leave at that time? A. That's right. At first when I gave her the money, she said she was going to get on back to see if her boy friend was there and that she would walk, and I told her, I says, you don't have to walk without anybody yourself. In any event, I said, I am going back over your way and I will take you home, by your home, and you won't have to walk up the street by yourself.

191 Q. Well, then, now to reconstruct what you have said, the fact that she was in the room and had a drink while you fixed the lights and washed your hands, then as soon as you came back, she asked for the money. You asked her to step outside and you did get the money for her, is that right? A. That's right.

Q. So she really was not in your place over five minutes after you had washed your hands, is that right? A. Couldn't have been.

Q. You deny that you offered her a drink of whiskey? A. I didn't offer it to her. The thing I said to her, in regard to the whiskey when we came in, I told her, I said I hope you will excuse me because I have a terrible pain in my stomach and I says, I am going to take a drink of this whiskey I have here and I says, I guess your mother told you that I am a drunkard, by the tales that she tells, but it is very little whiskey that I drink. I says, I am drinking this because I have a pain in my stomach, and I said, I don't know if you drink anything, but if you do, you are welcome to it.

Q. Then you did offer her a drink if she wanted one, is that right?

A. I only say, I don't know if you drink, but if you do, you are welcome to it and then I went out of the room.

192 Q. When did you say that? A. That was when I first came in.

Q. That was when you first came in? A. That's right.

Q. Now, did there come a time when you did what she said you did, that you grabbed her and forced her against her will to have sexual relations? A. Absolutely not.

Q. Did you scratch her? A. No, I did not -- I didn't touch her.

Q. Pardon? A. I did not touch her.

Q. You didn't touch and scratch her around the neck? A. No, sir.

Q. Well, now, did you observe any scratches on her when she got in your car? A. That was determined at the preliminary hearing that there were no scratches on her.

Q. My question is, did you observe any scratches on her when she came out to get in your car to go to your place? A. I wasn't noticing her that close.

Q. All right. Did you observe any scratches while she was in your place? A. No, I didn't notice her that close, but at the preliminary hearing the next morning, they looked at her neck and there was

193 no scratches on her at the preliminary hearing and her testimony was opposite from what she made here.

Q. You heard the doctor testify concerning the medical report

that there were scratches on her, didn't you? A. Well, I don't know how they got there.

Q. All right. Now, you heard her testify that after you had had sexual relations with her, then you committed an act of oral sodomy?

A. I had no type of sexual relations with her. When I does come to sexual activities, there is only one way that I perform the act and that is the normal and natural way that man is supposed to do it.

Q. Can you perform the normal sexual act? A. Well, with this condition down here that is bothering me now, and has been for some time, if I was relieved of it I am quite sure I could.

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Q. October 17, were you able to perform the sexual act? A. Did you say 18th or 17th?

194 Q. The 17th, October 17? A. No, because as I said, I had been on my feet this great length of time. I had this emergency when I came in from work where I have to leave out shortly after arriving within 10 minutes and go to seek some facilities for making lights that night.

Q. When was the last time you were able to perform the sexual act? A. As I said here the other day, when I was on vacation in July, when I had some free time to be rested up.

Q. Well, now, you heard your stepdaughter testify and you also heard Detective Holden testify concerning your statements about you spent all of your money for prostitutes and whiskey. Is that true? Did you make that statement? A. No, I did not. The only thing I said in regards to -- she may have been impressed that way -- was when I stated to her that your mother must tell you I am a drunkard and must tell you that I spend all my money on whiskey and prostitutes. That is the way I told her.

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195 Q. You heard the statement made by the -- your stepdaughter that you made a statement to the effect that if she should tell her mother,

then just tell her that you needed a woman. Did you make such a statement? A. No, no. I didn't tell her anything like that, no.

Q. Now, when you left the premises with your stepdaughter on this particular night after you had given her this money, you two walked to the car, did you not? A. That's right, about a ten minutes walk.

Q. And then you took her home? A. That's right.

Q. Well, now, had she said anything to you from the time you gave her that money up until the time you discharged her as a passenger from your car at 13th and R Street, which would lead you to believe she was angry with you? A. She -- I don't -- I have to think back on the conversation, wasn't too much conversation then and since you mentioned that, I would say that based upon the statement I made in regard to her mother, which, of course, she doesn't know the trouble I have had with her mother, because she hasn't lived here for a number of years -- she only returned here I think around July of last year and she didn't know
196 what went on between her mother and I, and she possibly may have become angry because I was telling her --

Q. Just a minute I want to know if she said anything or did anything to lead you to believe she was angry with you, sir, from the time she left the house after you gave her the money until the time you discharged her from your car? A. She said -- she may have been angry, but she didn't show it too much.

Q. Well, what was she angry about, if you know? A. Possibly what I said in regard to her mother, about her mother. I told her all your mother has ever done is cause me trouble and lose all my money and everything else and she just seemed to want to do nothing but to do me harm and I said I don't know what she is doing around at that house where you all live, I said, everything must be going on around there and I told her, I said, at one time I offered your mother -- give your mother an offer where I would provide another home for her from this place where she is living now and she refused to accept the offer and the money that I had to provide it with. I said, therefore, your mother,

there can't be much to her.

Q. Now, you said that on the way back, is that right? A. That's right.

Q. You didn't say anything like that on the way over, did you?

197 A. On the way over there, well, let's see. I was driving around looking for a parking place, wasn't too much conversation.

Q. When did you offer her mother this home you were telling your stepdaughter about? A. When she was living at 1702 13th Street, across the street from where she is living at the present time -- at least where she was living, 1302.

Q. I mean what year was this, please? A. It was around '57, I think I would say -- '58.

Q. Now, you saw your little girl Joyce come down here? A. Yes.

Q. Do you think that she has anything against you? A. Not that I know of. Her mother has poisoned the children's mind against me. When I came back to Washington after being out of town for about 15 months, she had poisoned the children's mind so against me that the first time they saw me they were cursing me out until I had managed to be in their presence enough for them to change their attitude.

Q. She had washed their minds -- you mean by that she had brain-washed them?

MR. DAVID: Objection.

THE WITNESS: I would say --

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BY MR. BLACKWELL:

Q. What do you mean by washing their minds? A. I didn't say wash them. I say that my wife had put thoughts -- ideas into their minds.

Q. Is that what you testified to just previously?

MR. DAVID: If it please the Court, may the reporter read it. The man said poisoned their minds.

MR. BLACKWELL: I am sorry. I didn't understand that.

THE WITNESS: That's what I mean. She had turned the children

against me, in other words, and in other words telling all kinds of tales about me --

* * * * *

Q. Now, there came a time when you returned to 1624 15th Street, after you had discharged your stepdaughter at her address, did there not? A. That's right.

Q. The police officers were there waiting for you, weren't they? A. That's right.

199 Q. And when they came up to your car, you started denying you had done anything wrong? A. No, no, the first statement I made was, "What can I do for you?"

Q. What did they say? A. The officer said, "A girl over here got a complaint against you."

"Complaint," I says, "complaint on what?" I says, "I haven't done anything."

Q. You could see the girl in the car? A. Not from where I was parked that way, so then he asked me to get out of my car and walk over there and see who it was.

Q. What did you do? Did you do just what the officer asked you to do? A. I got out of the car, I walked over there and I didn't know who it was until I saw this girl Audrey sitting in the rear seat of the scout car and then I saw who it was and then he said she is the one made the complaint and she was sitting back there smiling and laughing like it was something amusing to see me in this predicament and I asked her what did she mean, what was she up to.

Q. You are sure she wasn't crying? A. No, sir, absolutely not.

200 Q. She was smiling and laughing in the scout car? A. She seemed to have an expression of self-satisfaction in seeing me man-handled and all that and making these accusations against me.

Q. She testified that she had always regarded you as a father and you had never done anything improper to her prior to October 17.

A. That is still true.

Q. Now, you heard the officer testify about you were quite

belligerent right there before you -- when you first stepped out of the car. Is that true? A. No, not until after I got across the street and I can explain that.

Q. All right. Well, now, you had a female in that car with you. Where is she today? A. I don't know.

Q. What was her name? A. I don't know.

Q. How did you come to get her in the car? A. Well, I met her through a friend whom I knew, this fellow whom I was acquainted with, I would say, and we stopped and talked for a few minutes and I told him, I says, I guess I get along home and after he introduced me to this person -- he didn't call her name -- just said this is a friend of mine --

Q. He introduced her without calling her name, is that correct?

201 A. He just says, this is a friend of mine and when I told him I was going home, she asked me which way was I going.

Q. Now, where did this introduction take place? A. It took place on T Street.

Q. Whereabouts on T Street? A. 1400 block.

Q. In the middle of the block or -- A. Middle of the block.

Q. This was about what time? A. Well, it wasn't too long after I had let Audrey out, because I went there in that neighborhood area to go to the delicatessen around on 14th Street to get me some soup or something like that I could take in with me to eat.

Q. Then, how did you come to meet this party right in the middle of the block. Were you in the car? A. I was returning to my car and I saw this fellow whom I was slightly acquainted with and he had this woman with him and he and I stopped to talk and --

Q. He had this woman with him? A. That's right.

Q. And then he turned and introduced you to her? A. He just said a friend of his and she asked me which way was I going and I told her and she asked for a ride.

202 Q. Of course, now you were facing east away from your home because T Street is a one-way street? A. That's right.

Q. Where did she tell you she lived? A. She didn't tell me.

Q. She just asked you where you were going and said that she --

A. No, she didn't ask me. After I said I was going towards 15th and Corcoran, she asked for a ride.

Q. 15th and Corcoran? A. That's right.

Q. She specifically told you she was going to 15th and Corcoran?

A. No, she just asked for a ride as far as I was going -- she didn't say where she was going.

Q. You told her you were going to -- A. That's right. I said I was going there.

Q. All right. Then you drove out T Street, down 13th Street and --

A. No, I drove T down 14th Street.

Q. Pardon me? A. I drove out T Street, right down on 14th Street, came down to R Street, turned right, then on R to 15th, and made a left turn on 15th Street, and pulled over and parked on 15th Street, in front of where I live.

203 Q. You parked right in front of where you lived? A. Well, about -- almost a half a block from the door.

Q. And you had this woman in that car then? A. That's right.

Q. And you had never asked her her name? A. No, I didn't. If she mentioned it, I didn't catch it.

Q. You never asked her where she was going? A. No. She just was going for the ride -- I mean she was going as far as I was going and then I guess she was going to get out and if she had wanted to come in just to keep my company she would have been welcome just to have a drink of what I had left there or to talk or to play some records, I had that.

* * * * *

Q. Now, have you attempted to locate this friend who introduced this woman to you? A. I mentioned the fact to my attorney and -- the man, you say?

Q. Yes, the man who introduced you. A. I mentioned the fact

204 to my attorneys and I don't think they can locate the man.

Q. Now, how did you say this complaining witness was dressed on this particular night? A. She had slacks on and as I said, I was busy with what I was doing there when I came in seeing about the lights. I know she had slacks on. I couldn't be positive about whether she had a blouse or sweater, but one or the other she had on a top coat like a woman's coat.

Q. I think you have given your reasons as to why she would make this complaint against you, although it is not true? A. In other words, I think she is under the impression that -- she is on her mother's side, that is the way I put it.

* * * * *

207 (AT THE BENCH)

THE COURT: I will submit it with -- if you want -- the lesser included offense.

MR. DAVID: The lesser.

THE COURT: The reason is the defendant denied he participated at all, but I will submit the lesser included charge of assault with intent to commit rape, if you request it.

208 MR. DAVID: Yes.

MR. BLACKWELL: In view of the facts, though -- strike that.

(IN OPEN COURT)

* * * * *

Whereupon,

IRMA P. SMITH

was called as a witness by the defendant and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVID:

Q. Please keep your voice up so that everyone can hear you?

Please state your name. A. My name is Irma P. Smith.

Q. What is your vocation? A. I am a policewoman assigned to the Detective Bureau in the office of the Sex Squad.

Q. Detective Smith, did you take a statement from the complaining witness in this case? A. I did.

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* * * * *

Q. When did you take the statement, Mrs. Sergeant Smith?

A. It was after the arraignment in Municipal Court, approximately one o'clock in the afternoon.

THE COURT: On what date?

THE WITNESS: On October 18, 1962.

BY MR. DAVID:

Q. Thank you. Now, at that time was the complaining witness crying? A. Not to my recollection at this point.

MR. DAVID: I have no further questions.

MR. BLACKWELL: No further questions.

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Whereupon,

HENRIETTA TAYLOR

was called as a witness by the defendant, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVID:

Q. Please keep your voice up so that we can all hear you. What is your name? A. Henrietta Taylor.

THE COURT: A little louder. Get closer to the microphone.

THE WITNESS: Henrietta Taylor.

BY MR. DAVID:

Q. Where do you live? A. 1624 15th Street, Northwest.

Q. What is your job, Mrs. Taylor? A. Day's work.

Q. What does your husband do? A. Mail carrier.

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Q. Mrs. Taylor, do you and your husband take care of a rooming house? A. Yes.

Q. Is that the rooming house where Thaddeus Tansimore lives?

A. Yes, that is my home.

Q. Directing your attention, Mrs. Taylor, to the date October 17, 1961, were you home between the hours of five and one o'clock in the morning on that date? A. Yes.

Q. Where is your room, Mrs. Taylor, in the house? A. On the second floor.

Q. Now, between the hours of five and one o'clock in the morning, commencing on the date October 17, did you hear any disturbance in your home? A. No, I didn't.

Q. Did you hear any screaming -- a woman's voice screaming? A. No, I didn't.

Q. Did you hear any scuffling or wrestling or tussling in your building? A. No, I didn't.

MR. DAVID: Mr. Prosecutor, you may cross examine.

CROSS EXAMINATION

BY MR. BLACKWELL:

212 Q. I didn't exactly ascertain where you live on the second floor, Mrs. Taylor.

Where do you live on the second floor? A. I have the whole second floor.

Q. And where is your bedroom? A. My bedroom is in the center.

Q. You say you were home during the -- on December 7 from five p.m. until seven o'clock in the morning of the 18th, is that correct? A. I didn't understand you.

Q. You were home from five p.m. December 17 until seven o'clock a.m. October 18, is that right?

MR. DAVID: Objection. No such testimony in the record.

THE COURT: He is asking her if she testified to that.

BY MR. BLACKWELL:

Q. Did I understand you to testify, madam, that you were home from five p.m. October 17, 1961, until the next morning at seven o'clock, a.m.? A. Yes, yes.

MR. DAVID: If it please the Court, I don't know whether

the witness is confused or not but the record --

THE COURT: This is her answer. Proceed counsel. If you wish to ask any other questions, you may.

BY MR. BLACKWELL:

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* * * * *

Q. October 17, 1961, did you see the defendant Tansimore?

A. Oh, no.

Q. Did you see him on the 18th, of October, 1961? A. The 18th?

Q. Yes. A. Did I see him?

Q. That's right. A. October 18 what?

Q. October 18, 1961. A. No, I didn't see him.

Q. Well, did you see him on October 15, 1961? A. I didn't see him then.

Q. Where did you work on October 17, 1961? A. Well, I work different places. I work in Maryland.

Q. I am asking you where did you work on the 17th of October?

A. The 17th of October?

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Q. 1961? A. Where did I work?

Q. That's right. A. Mrs. Hirsch.

Q. Where does she live? A. In Maryland.

Q. What time did you go to work on October 17? A. I went in the morning.

Q. What time? A. About ten minutes to six when I left home.

Q. What time did you return? A. I got back home about four o'clock.

Q. You arrived back about four o'clock? A. Well, I mean I got in the city at that time.

Q. What time did you get back home? A. I guess it must have been about five o'clock.

Q. Now, where did you work on the 14th of October, 1961?

* * * * *

THE WITNESS: I can't say where I worked on the 14th exactly.

BY MR. BLACKWELL:

Q. Could you tell me where you worked on the 15th? A. I can only tell you what you asked me about October, the other days where I
215 work at --

Q. Now, Mrs. Taylor, why is it that the 17th of October stands out more than these other dates? A. It doesn't stand out. I just don't understand. I don't understand. I am asking just to understand.

Q. I see. Very well, Mrs. Taylor.

Well, did you hear any noise downstairs on October 15? A. No, I didn't hear any noise at all. I haven't heard any noise in my place at all.

Q. You never have heard any noise? A. No, because I don't have a noisy place.

Q. How often would you see Mr. Tansimore? A. I would see Mr. Tansimore when he come to pay his rent.

Q. When was that? A. When he paid his rent -- on Saturdays.

Q. That is about the only time you see him? A. Well, occasionally we run into each other, but I couldn't say exactly every day because I work and he works.

Q. Don't you use the kitchen downstairs to cook? A. I use the kitchen upstairs. I don't have to cook in the basement.

Q. Do you have a kitchen in the basement? A. I have a kitchen in the basement.

216 Q. Well, who uses that? A. Roomers.

Q. But you have a private kitchen is that right? A. I have a private kitchen.

Q. Do you have a television or radio? A. Sure.

Q. You didn't go out anywhere after you came in on the 17th?
A. No, I didn't .

Q. Where was your husband? A. Well, my husband, he was out. I don't know exactly what time he came in, but he was out.

Q. On the 17th? A. Yes.

Q. Why do you remember the 17th, Mrs. Taylor, more so than

any of these other dates? A. I don't -- I tell you -- I tell you what I know. That's all. I was home on the 17th and in the evening.

Q. But you can't say you were home on the 15th or the 16th, can you? A. Well, I am home all the time in the evenings. I am home all the time in the evening.

Q. You don't go out to church in the evening? A. I go to church on Sunday. I --

* * * * *

217 Whereupon

BLAYTON PAUL TAYLOR

was called as a witness by the defendant, and having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAVID:

Q. Please keep your voice up so that we may hear you without any difficulty.

What is your name? A. My name is Blayton Paul Taylor.

218 Q. Where do you live, Mr. Taylor? A. 1624 15th Street, Northwest.

Q. Directing your attention to the date, October 17, 1961, what time did you get home on that evening? A. I got home between 11 and 12 o'clock.

Q. After --

MR. BLACKWELL: If Your Honor please, may we find out whether that was a.m. or p.m.

BY MR. DAVID:

Q. Was that a.m. or p.m.? A. It would have to be p.m.

Q. Thank you. After you arrived home, Mr. Taylor, did you hear any unusual noises in your home? A. I did not.

Q. Did you hear any lady screaming? A. I did not.

Q. Did you hear any noises that would have sounded like someone was scuffling or tussling or fighting in the basement of your home? A. I did not.

MR. DAVID: I thank you, sir. I have no further questions of this witness.

CROSS EXAMINATION

BY MR. BLACKWELL:

219 Q. You were not home between nine and ten o'clock or nine and nine-thirty that evening, were you? A. I?

Q. Yes. A. No.

Q. By the way, do you have a bathroom on the first floor or the second floor? A. Beg your pardon.

Q. Do you have a bathroom on the first floor? A. I have one on the first floor and one on the second floor.

* * * *

222 (AT THE BENCH:)

* * * *

MR. DAVID: At this time, Your Honor, I make a motion for judgment of acquittal.

THE COURT: It is denied.

* * * *

THE COURT: That takes us past the lunch time. That is the difficulty about it.

The charge is rape and assault with intent to commit rape. No admission.

MR. BLACKWELL: No admission.

* * * *

223 THE COURT: He admitted he was there. There is nothing special except the charge of rape and assault. Let us go ahead.

* * * *

CHARGE TO THE JURY

THE COURT: Ladies and gentlemen of the jury, the evidence in this case has been completed. Counsel have made their final arguments to you and now it becomes the Court's responsibility to state to you the rules of law which are to guide you in the rendition of your verdict in this case.

When a case is tried to a Court and to a jury, as this case has been tried, the counsel and the Court and the jury have different duties and responsibilities to perform.

Counsel, for the most part, have performed their responsibilities. They have submitted evidence in behalf of their respective clients, made such objections as they deem necessary on behalf of their clients and made their closing arguments to you.

It was proper for you to give attention to those closing arguments, as the Court observed that you did give to them.

But you will bear in mind that in the final analysis, the closing arguments of counsel do not constitute evidence and if any statement has been made by either counsel in his closing argument which conflicts with your own recollection of the evidence, you should rely solely and exclusively upon your own remembrance of the testimony in this case.

225 Likewise, the Court, in its charge to you, may state briefly the position of the parties, the issues in this case.

If any statement is made by the Court in its charge that conflicts with your own recollection of the evidence, you should also disregard that and rely solely upon your own remembrance of the testimony in this case.

Now, the function of the Judge, on the other hand, is to preside at the trial and to see that it is conducted in an orderly and dignified fashion, to rule upon objections when they are made from time to time, and at this juncture of the case, to give to the jury the rules of law which you are to follow.

You will recall I questioned you on the voir dire and mentioned

several rules and stated I would give you additional rules in my final charge. I asked whether any of you, by reason of any experience you have had, could not follow the instructions I indicated I would give and such other instructions as I would give to the jury in my final charge.

None of you said you had any experience which would prevent you from following the charge of the Court.

226 The Court is the supreme Judge of what the law is and you must accept the law as the Court gives it to you, regardless of any opinion you may have as to what the law is or what it ought to be.

On the other hand, ladies and gentlemen, you are the exclusive judges of the facts in this case. As exclusive judges of the facts, you are to determine the credibility of witnesses.

The Court is not going to tell you how to decide this case from the facts, either by what the Court says or by the tone of the Court's voice or in any other way, nor should you try to gather from anything that has transpired in this case and anything the Court says in its charge, how the Court feels the facts should be decided.

The Court is anxious to submit the case to you objectively, free from any such impression.

However, without indicating to you how this case should be decided, it is clear that someone is lying in this case.

There is not any question about that.

Therefore, your responsibility becomes even more important as exclusive judges of the facts, when you are called upon to determine the credibility of witnesses. That will be your responsibility, when you are called upon to determine where the truth lies in this case.

227 In determining credibility, you may take into consideration, so far as you are able to do so, the manner, conduct and demeanor of each witness who has testified;

His memory or lack of memory -- of course, when I use the pronoun "he," I mean "his" or "her," --

Faculty or lack of faculty of each witness to see and hear those things about which he has testified;

The reasonableness or unreasonableness of the story that is told -- that is a pretty good test that you will recognize as having often been used by many of you in the daily experiences of your lives when you have been called upon to determine the truth of a particular situation as you are called upon now to determine the truth here from the sworn testimony before you --

Any bias or prejudice shown by any witness which might have influenced his judgment or colored his testimony;

And all those other factors including interest in the outcome of the case which you as intelligent and experienced people take into consideration when you determine the difference between truth and untruth or truth and half truth.

If in your opinion any witness has in this trial testified wilfully, falsely, or corruptly with reference to any material fact concerning which the witness could not possibly have been mistaken, you are at liberty, if you deem it wise to do so, to disregard the entire testimony of that witness or any part of the witness' testimony, except as it has been
228 corroborated by credible witnesses or by facts and circumstances established by the evidence in this case.

You members of the jury are the fact-finding branch of this Court and in the performance of your duties, you must not let sympathy or prejudice or passion influence your judgment in any manner whatsoever.

You must reach your judgment on the facts as disclosed by the evidence adduced in open Court and inferences which are reasonably deducible therefrom.

You are not to speculate, conjecture, or guess.

The defendant Thaddeus E. Tansimore has been on trial here under a one-count indictment under a provision of the District of Columbia Code, which charges him with the offense of rape.

The indictment reads: On or about October 17, 1961, within the District of Columbia, Thaddeus E. Tansimore had carnal knowledge of a female named Audrey R. Cubbage, also known as Audrey R. Bolyar, forcibly and against her will.

To this indictment the defendant has entered a plea of not guilty and thus puts in issue each and every essential element and allegation contained in that indictment.

Now, the fact that the defendant has been indicted and is charged with a crime does not amount to evidence of guilt, as I indicated to you on the voir dire.

229 It is not to be taken as an indication of guilt because an indictment is merely the procedure and the machinery by which a defendant is brought before the Court and placed on trial.

It is also a rule of law that every defendant in a criminal case is presumed to be innocent.

This presumption of innocence relates to every essential element of the offense and attaches to him throughout the trial until overcome by legal evidence which establishes his guilt beyond a reasonable doubt.

Further, it is the law that the burden of proof is upon the Government to prove the defendant guilty beyond a reasonable doubt.

Unless the Government sustains this burden and proves beyond a reasonable doubt that the defendant has committed every element of the offense with which he is charged, the jury must find him not guilty.

Proof beyond a reasonable doubt does not mean proof beyond all doubt whatsoever.

It does mean proof to a moral certainty and not necessarily proof to an absolute or mathematical certainty.

A reasonable doubt is not a vague, speculative or obscure doubt.

Rather, it is such a doubt as would cause you to hesitate to act upon it in the graver and more important transactions of your lives.

230 If after an impartial consideration of the evidence, you can say to yourselves that you are not satisfied of the defendant's guilt, then, of course, you have a reasonable doubt.

Unless there is substantial evidence of facts which exclude every reasonable theory but that of guilt, your verdict must be not guilty.

In other words, to find the defendant guilty, any reasonable theory of innocence must be excluded by the facts.

But on the other hand, if after such impartial consideration of all the evidence, you can truthfully and candidly say to yourselves that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters pertaining to your own affairs, then you have no reasonable doubt.

In other words, proof beyond a reasonable doubt is such proof as will result in an abiding conviction of the defendant's guilt on your part, such a conviction as you would be willing to act upon in the more weighty and important matters pertaining to your own affairs.

Now, as I told you when I read this indictment to you, the defendant is charged with the crime of rape.

Rape is defined in the District of Columbia Code as having carnal knowledge of a female forcibly and against her will.

231 The words "carnal knowledge" are synonymous with sexual intercourse.

In plain language, rape may be defined as having sexual intercourse with a female forcibly and against her will.

In order to justify a conviction on the charge of rape of a female, the complaining witness in this case must have resisted the act to the utmost of her physical powers; unless her resistance was overcome by threats which put her in fear of death or of grave bodily harm, not just any fear, but fear of death or grave bodily harm.

The law does not permit a conviction on the charge of rape on the basis of the testimony of the complaining witness standing alone.

Corroboration of her testimony is required according to the rule of law prevailing here in the District of Columbia.

Such corroboration, however, need not be an eye witness. Corroborating circumstances may be sufficient corroboration.

It is for you to determine whether the Government has proved beyond a reasonable doubt that rape has been committed as I define it to you and there has been sufficient corroboration.

232 Now, sexual penetration of the female is a necessary element of the crime of rape.

There can be no carnal knowledge without penetration into the body of the female.

Penetration means that the sexual organ of the male entered and penetrated the sexual organ of the female.

Mere actual contact of the sexual organs is not sufficient.

However, penetration to any particular extent is not required.

The slightest penetration of the body of the female by the sexual organ of the male is sufficient.

Completed sexual coition, that is emission, is not essential.

Now, if the Government has failed to prove beyond a reasonable doubt that the defendant committed the charge of rape, the Court is submitting to you for your consideration whether or not the Government has proved beyond a reasonable doubt that the defendant committed a lesser included charge, which is called assault with intent to commit rape.

An assault is defined by law as an unlawful attempt or effort with force and violence to do injury to the person of another, coupled with the present apparent possibility of carrying out such an attempt.

233 In the charge of assault with intent to commit rape, the Government must prove beyond a reasonable doubt an assault and also a specific intent to commit the act of rape.

Of course, specific intent cannot be proved directly. We cannot photograph the processes of the human mind. Intent can only be proved by what a person says and by what a person does.

Now, of course, this trial has not been a long or a protracted one. The evidence, I am sure, is fresh in your minds, members of the jury.

Therefore, I do not think it is necessary for the Court to give you any detailed analysis of the evidence, but simply say very briefly that it is the position of the Government that on October 17, 1961, at the premises occupied by the defendant, at 1624 15th Street, Northwest, in the District of Columbia, the complaining witness, Audrey R. Cubbage,

was raped by the defendant.

The Government asserts that she attempted to resist and that the defendant used force on her and choked her, forcing her to have sexual relations with him. She was required to submit to him because she was in fear of great bodily harm.

The Government contends further that there were some scratches found on her neck subsequent to this rape and upon examination of the complaining witness at the hospital shortly thereafter, her hymen was perforated and there was a first degree tear.

234 The Government asserts, therefore, that it has proved beyond a reasonable doubt that this defendant has committed the offense of rape as charged in the indictment.

The defendant, on the other hand, denies that he committed the offense of rape or any other offense and asserts that the Government has failed to prove beyond a reasonable doubt that he committed rape or any other offense.

The defendant admits that Audrey Cubbage was in his apartment on October 17, 1961, but he asserts that she was there merely for the purpose of securing some money.

The defendant asserts that Audrey has testified as she has done in this case because of the difficulties that had arisen in the marital life of the defendant and his wife and that the complaining witness was angry at him and had an antipathy for him because of these differences between her mother and the defendant. Therefore, she has told this story which the defendant asserts is not a true story.

Therefore, the defendant contends that the Government has failed to prove beyond a reasonable doubt that he committed the offense of rape or any other offense and asserts that he should be found not guilty.

Now, I have not attempted to analyze the evidence in detail, but, roughly, these are the conflicting positions of the parties in this case.

235 In the brief statement that I have made of these conflicting positions, you should not try to gather any impression as to how the Court feels.

As I indicated before, the facts should be decided by you and if it appears to you that any of these statements are not correct in accordance with the evidence, you should disregard them and rely solely upon your own recollection of the testimony.

Because the Government did produce an expert witness, I should charge you that a person who by education, study and experience has become an expert in any art, science, or profession, and who is called as a witness, may give his opinion as to any such matter in which he is versed and which is material to the case.

You should give careful consideration to the opinion expressed in connection with other evidence in the case and you should weigh the reasons, if any given, for such opinion.

You are not bound, however, by such an opinion. You may give it such weight as you deem it is entitled to receive, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

Now, a written form of verdict is being presented to you, members of the jury. Omitting the caption of the case, it simply reads: we, the
236 jury, find the defendant, and then there is a blank line, under which are written the words, "Not guilty."

If you find that the Government has failed to prove beyond a reasonable doubt that the defendant has committed either the offense of rape or the offense of assault with intent to commit rape, you will check this line above the words "not guilty."

Then under the next line is written the words, "guilty of rape."

If you find the Government has proved beyond a reasonable doubt, under the instructions that the Court has given to you, that the defendant is guilty of rape, you will check the second line.

Underneath the third line, are written the words, "guilty of assault with intent to commit rape."

If you find that the Government has failed to prove beyond a reasonable doubt that the defendant committed the offense of rape, but that

the Government has proved beyond a reasonable doubt that the defendant committed the lesser included charge of assault with intent to commit rape, then you will check the third line.

Have the verdict signed by your foreman or forewoman, dated and returned to this Court.

237 Considering this matter, therefore, members of the jury, in the light of the instructions that I have just given to you, you will use the same practical approach, the same common sense, ordinary intelligence that you use in determining any other important matter in the course of your everyday experience.

You are aware, of course, that your verdict must be unanimous.

Upon reaching the jury room, you will first select a foreman. I was going to suggest a foreman or a forewoman, but I notice there are no women on the panel of 12 which will go to the jury room.

So, I need only say you will first select a foreman who will preside over your deliberations in the jury room and return your verdict to this Court.

Then, members of the jury, you will proceed to reach a verdict without sympathy, passion, prejudice or emotion of any kind, one way or the other.

Anything further from counsel?

MR. BLACKWELL: The Government is satisfied, Your Honor.

MR. DAVID: Counsel for the defendant is satisfied, if it please the Court.

THE COURT: The two alternate jurors may be excused from this case and you may return to the jury lounge at this time.

238 THE DEPUTY MARSHAL: The jury retire to the jury room to deliberate.

(Whereupon, at 2:07 p.m., the jury retired to deliberate.)

* * * * *

239 (At 4:38 p.m.)

(The jury enters the courtroom.)

THE COURT: Mr. Foreman, will you please rise?

THE FOREMAN: Yes, sir.

THE COURT: Without indicating to the Court how you stand, one way or the other, I do not want to know that, -- I simply would like to ask you -- I assume you are having difficulty arriving at a verdict in this case?

THE FOREMAN: Yes, Your Honor, we are.

THE COURT: Do you feel there is necessity of some continuous further deliberation?

THE FOREMAN: I think that it can be solved with a little further deliberation.

240 THE COURT: By this question I ask now, I do not want to have it appear that there is any pressure, either actually or implied, but I am wondering whether you can indicate in any way the length of time, from your discussions, at which you might be able to agree. Would this be quite soon or would it be a matter of several hours?

THE FOREMAN: Well, I would rather not venture a thought on that, because I can't be positive.

* * * * *

[VERDICT]

[Filed March 6, 1962]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES

vs

THADDEUS TANSIMORE
Defendant

)
) Criminal No. 925-61
) Charge Rape
)

On this 6th day of March, 1962, came again the parties aforesaid, in manner as aforesaid, and the same jury as aforesaid; whereupon the

jury resume their deliberations at 10:00 a.m.; thereupon the jury return into Court and upon their oath say that the defendant is Guilty of Assault with intent to commit Rape; whereupon each and every member of the jury is asked if that is his verdict and each and every member thereof says that it is. The case is referred to the Probation Officer of the Court and the defendant is remanded to the District of Columbia Jail.

By direction of

/s/ LUTHER W. YOUNGDAHL
Presiding Judge
Criminal Court # 3

Present: United States Attorney

By Joel Blackwell

Assistant U. S. Attorney

* * *

[Filed April 5, 1962]

JUDGMENT AND COMMITMENT

On this 30th day of March, 1962 came the attorney for the government and the defendant appeared in person and by his Attorneys King David and William R. Meekins, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of Not Guilty and a verdict of Guilty of the offense of ASSAULT WITH INTENT TO COMMIT RAPE as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is hereby guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) to Nine (9) years.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Luther W. Youngdahl
United States District Judge

[Filed April 10, 1962]

PETITION FOR LEAVE TO PROSECUTE APPEAL WITHOUT
PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT
THEREOF

The petitioner, Thaddeus Tansimore, desires to appeal from the judgment of this Court, entered herein on March 30, 1962, to the United States Court of Appeals for the District of Columbia Circuit, and is unable to pay the costs of the Appeal, or to give security therefor; and that he believes he is entitled to redress; that he makes this Appeal in good Faith; the grounds of Appeal are as follows:

- (1) The Court erred in denying defendant's Motion for Acquittal made at the conclusion of the evidence.
- (2) The Verdict is contrary to the weight of the evidence.
- (3) The Verdict is not supported by substantial evidence.
- (4) The Court erred in sustaining objections to questions addressed to several of the witnesses for the prosecution.
- (5) The Court erred in admitting testimony of several witnesses for the prosecution to which objections were made.
- (6) The Court erred in charging the jury, and in failing to fully charge the jury, and in refusing to charge the jury as requested.
- (7) The defendant was substantially prejudiced and deprived of a fair trial by reason of the inflammatory nature of the prosecutor's argument to the jury; and the repeated mis-statement of the evidence by the prosecutor to the jury.

Wherefore, petitioner requests that he be allowed to appeal from the above mentioned judgment of this Court without being required to prepay fees or costs, or to give security therefor.

/s/ Thaddeus E. Tansimore
Appellant

[Jurat, dated April 9, 1962] _____

[Received April 10, 1962]

NOTICE OF APPEAL

Thaddeus Tansimore, Appellant, 200 - 19th Street S.E.,
Washington, D. C.

King David, Attorney, Address, 1916 - 11th Street, N.W.,
Washington, D. C.

Offense: Rape.

Convicted and Sentenced to 3 to 9 years for Assault with intent to
rape on March 30, 1962, to custody of Attorney General.

Appellant is now confined in the District of Columbia Jail, 200 -
19th Street, S.E., Washington, D. C.

I, the above named Appellant, hereby Appeal to the United States
Court of Appeals for the District of Columbia Circuit from the above
stated Judgment.

Dated; April 6, 1962

/s/ Thaddeus Tansimore
Appellant

[Filed April 17, 1962]

April 12, 1962

Judge Youngdahl

Motion filed in Proper Person.

Deft: Thaddeus E. Tansimore

Case No.: 925-61

Motion: Petition for leave to appeal without prepayment of costs.

Please return to the Assignment Office.

Denied as frivolous and initialed by: Judge Luther W. Youngdahl.

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Thaddeus E. Tansimore,

Appellant

v.

United States of America,

Appellee.

No. 17245

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 28 1962

Joseph W. E. Smith
CLERK

PETITION FOR REHEARING

Appellant, by his counsel appointed by this Court, petitions the Court for a rehearing of its decision of December 20, 1962, on the following grounds:

1. The Court, in distinguishing Green v. United States, 95 U.S. App.D.C. 45, 218 F.2d 856 (1955), on the ground that there was no "request" for the lesser-included instruction in that case, while there was such a "request" in this case, has seized upon a verbal distinction without practical substance. The record in the two cases shows that in both cases the initiative for the instruction came from the court, which stated that it was an acceptable instruction. In both cases, counsel for the defense was agreeable. Whether

this agreement was expressed in terms of "I request" or "I do not object" cannot alter the circumstances surrounding the decision by the trial court to give the instruction: In both cases it was initially the court's decision that the instruction was appropriate, which conclusion was transmitted to counsel for acceptance. Appellant submits that the controlling effect of the Green decision cannot be avoided by reliance on the difference in verbalization of counsel's acceptance.

2. The Court has misapprehended the extent of appellant's reliance on Green, and in so doing has failed to take into account such cases as Burcham v. United States, 82 U.S.App.D.C. 283, 163 F.2d 761 (1947). The Court distinguished the Green case on the second ground that there the prosecution had failed to prove all the elements of the lesser offense, admittedly not the situation in this case. As pointed out in appellant's Main Brief, pp. 18-22, and Reply Brief, pp. 1-3, however, this Court has held that the giving of an instruction on a lesser-included-offense was properly refused in cases where, as in this case, the proof of the greater offense necessarily included proof of all of the elements of the lesser. E.g., Burcham v. United States, supra, in which the denial of a simple assault charge in a trial for assault with a dangerous weapon was upheld on

the ground that the existence of the knife alone was never challenged. It is submitted that the Court, by distinguishing Green, has failed to deal with the body of law holding that it is error to charge a jury on a lesser offense where the separate elements of the charged offense have not been challenged, but only the whole of the offense, as is true in this case.

On the basis of the foregoing, appellant urges the Court to reconsider its decision, and reverse the judgment of the district court.

Respectfully submitted,

/s/ Eugene I. Lambert
EUGENE I. LAMBERT
701 Union Trust Building
Washington 5, D.C.

Attorney for Appellant
(Appointed by this Court)

CERTIFICATE OF GOOD FAITH

I hereby certify that this petition is submitted in good faith and not for purposes of delay.

EUGENE I. LAMBERT

CERTIFICATE OF SERVICE

I hereby certify that this petition was served on William C. Weitzel, Jr., Attorney for Appellee, by mailing

a copy thereof to him, postage prepaid, at his office,
U.S. Court House, Washington 1, D.C., this 28th day of
December, 1962.

EUGENE I. LAMBERT

